

UNITED STATES DEPARTMENT OF JUSTICE
UNITED STATES DEPARTMENT OF AGRICULTURE

Public Workshops Exploring Competition
Issues in Agriculture

A Dialogue on Competition Issues Facing
Farmers in Today's Agricultural Marketplace

Des Moines Area Community College
FFA Enrichment Center
Ankeny, Iowa

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1 P R O C E E D I N G S

2 SECRETARY TOM VILSACK: Well, I want
3 to first of all welcome all to this meeting and
4 workshop this morning. I want to thank Rob Denson
5 and the folks at DMACC for giving us this
6 tremendous facility to operate in, and Rob, it's
7 good to see you, and thanks for all that DMACC is
8 doing for the young people who are in the community
9 college.

10 I want to thank all who are here
11 today. It's a great turnout. I also want to thank
12 the over 15,000 people who have already commented
13 as a result of the announcement of these workshops.
14 We will have a total of five workshops throughout
15 the country.

16 May 21 we will be meeting in Normal,
17 Alabama, to talk about poultry. On June 7 we'll be
18 in Madison, Wisconsin, to talk about the dairy
19 industry. On August 26 we'll be in Ft. Collins,
20 Colorado, to talk about livestock, and December 8
21 we will be in Washington, D.C. to talk about
22 margins.

23 We are certainly pleased and
24 appreciative of the fact that Senator Grassley and
25 Congressman Boswell, Lieutenant Governor Judge,

1 Secretary Northey are here and Attorney General
2 Miller for their time, but we are very, very
3 appreciative of the fact that the attorney general
4 of the United States is here, and I'll have more to
5 say about him in a few minutes.

6 And I also want to welcome Christine
7 Varney who is an Assistant Attorney General for the
8 Antitrust Division.

9 Let me start off by saying how deeply
10 concerned I am about rural America. When I was
11 born in 1950, 15 percent of the population of this
12 country were in the farming business, and today
13 less than 1 percent of our population is in the
14 farming business.

15 Our farmers in this country are the
16 most productive in the world. In 1950 a single
17 farmer would be responsible for feeding 20 people.
18 Today that number is a single farmer is responsible
19 for feeding 150 people. These are the individuals
20 who are responsible for our food, our water, an
21 ever increasing amount of energy, an export
22 surplus, and one out of every twelve jobs in
23 America.

24 Despite that extraordinary
25 productivity, only 11 percent of family farm income

1 comes from farming operations. We have seen a
2 significant reduction in the number of farmers in
3 the middle. Our last ag census indicated 108,000
4 new farming operations in the category of less than
5 \$10,000 in sales, an increase in the number of
6 farms with over \$500,000 in sales of about 40,000,
7 but a loss of 80,000 farms in the middle in the
8 last five years.

9 And when we lose farms in the middle,
10 it also impacts directly the entire rural economy.
11 Today's rural America has a higher poverty rate
12 than the rest of the country, a higher unemployment
13 rate than the rest of the country, significantly
14 less per capita income than the rest of the
15 country, an aging population, a workforce that is
16 less educated, and well over 50 percent of our
17 rural counties have lost population since the last
18 census.

19 The President has instructed the
20 Department of Agriculture to establish a framework
21 for a new rural economy, and we're making
22 investments in broadband, in new energy
23 opportunities, creating new markets here and
24 abroad, developing ecosystem markets, and expanding
25 conservation and forest restoration, all designed

1 to provide us additional income for our farm
2 families.

3 But it's obvious that more needs to be
4 done, and that's what brings us here today. I
5 think we have to recognize that great efficiencies
6 have led to consolidation. They've also resulted
7 in less expensive food for consumers in this
8 country. So the central question is, are farmers
9 and ranchers in this country currently getting a
10 fair shake? Is the marketplace providing a fair
11 deal to all who are in the farming and ranching
12 business? Is there sufficient transparency in the
13 process?

14 We know that seed companies control in
15 some cases the lion's share of certain commodities.
16 Does that help or does that hinder farmers and
17 ranchers? We know that the top four cattle packers
18 control roughly 80 percent of procurement. The
19 spot market in cattle was 68 percent in 1999.
20 Today it's roughly 52 percent.

21 We know the top four hog packers
22 control 65 percent of procurement. Today's spot
23 market is only 8 percent where just 15 years ago
24 it was 62 percent. We know the top four retailers
25 control 37 percent of the market, two times what it

1 was in 1992.

2 So the purpose of these workshops is
3 to explore, to determine whether or not the system
4 is fair. I would say that these are workshops that
5 have been long overdue. I know that there have
6 been many in this room who have expressed to me the
7 need for this kind of conversation and discussion.
8 Our hope is that they help us to inform and develop
9 better policy.

10 As you know, the Department of
11 Agriculture is responsible for the enforcement of
12 the Packers and Stockyards Act. We recently have
13 made improvements in poultry contracting. We're in
14 the process of completing work on defining undue
15 preferences and unfair practices pursuant to the
16 farm bill. We're adding additional enforcement
17 mechanisms within the Packers and Stockyards Act.

18 We're looking at new credit tools to
19 ensure that poultry and pork producers are treated
20 fairly. We've established a dairy advisory
21 committee to look at dairy pricing, and we're
22 preparing for the farm bill discussions of 2012.
23 All of those actions can be informed by what we
24 hear today and over the course of the next several
25 meetings.

1 I want to take this opportunity to
2 introduce to my friends from Iowa my friend from
3 Washington, D.C., the Attorney General of the
4 United States. I think it's fair to say that the
5 Attorney General is no stranger to Iowa, having
6 spent a good deal of time campaigning on behalf of
7 President Obama in this state. He is a key
8 confidant of the President's. He is and has been a
9 U.S. Attorney, a Superior Court Judge, a Deputy
10 Attorney General, and now the Attorney General of
11 the United States.

12 It's my honor and privilege to welcome
13 you, General, to my great state and to the people
14 who are obviously very interested in what we're
15 going to do here today. Ladies and gentlemen, the
16 Attorney General of the United States.

17 ATTORNEY GENERAL ERIC HOLDER: Thank
18 you very much, Secretary Vilsack. It's good to be
19 with you, and it's great to be back in this
20 beautiful state, your beautiful home state.

21 As the Secretary indicated, I had a
22 chance to spend quite a time -- quite a good deal
23 of time here during the President's campaign, and I
24 think that's when the people of this great state
25 taught me and proved to me and proved to our entire

1 nation that no matter how improbable the goal or
2 how difficult the task, there's simply no better
3 place to begin than right here in Iowa.

4 I have to tell you that when I was
5 here during the campaign, I was drawing crowds as
6 large as three. Things have changed a little bit.
7 But today I've returned for what I know will be
8 another learning opportunity, and I really want to
9 stress that, a learning opportunity.

10 As I stand here, as I sit here, I'm
11 reminded of President Eisenhower's observation -- I
12 think this is a great quote: "Farming looks mighty
13 easy when your plow is a pencil and you're a
14 thousand miles away from the cornfield." Dwight
15 Eisenhower, great words. Those words, I think,
16 remain true today.

17 And in the decades since he spoke
18 them, the challenges that face farmers and other
19 leaders across our agriculture industry have become
20 even more difficult. And that's why we have
21 gathered here for this historic discussion, and it
22 really is historic. I'm glad to see that so many
23 of you are here, and I want to thank the people of
24 Ankeny for hosting this milestone event.

25 Now, I don't use the word milestone

1 lightly. I mean I really don't. It's been more
2 than a century since the Sherman Antitrust Act
3 became law and nearly 90 years since the Packers
4 and Stockyard Act entered the books. In that time,
5 not once -- not once -- have our nation's
6 Departments of Justice and Agriculture come
7 together for a public discussion on competition and
8 regulatory issues in your industry.

9 Not once have farmers, ranchers,
10 processors, consumer groups, economists, and
11 antitrust attorneys joined to share their
12 perspectives on issues of competition and
13 regulation, issues that you all understand best.
14 But today, in this room, that is exactly what is
15 happening and what is going to happen. And it's
16 what will happen in similar rooms across the
17 country in the coming months, as the Secretary
18 indicated.

19 These workshops, I think, are an
20 opportunity for all of us. And I believe they will
21 provide each of us with a more complete
22 understanding of an industry that has been at the
23 core of the American economy ever since there was
24 an American economy. The workshops, I think, also
25 reflect the Justice Department's renewed commitment

1 to collaboration, to transparency, and to results.

2 Now, while our top protection -- our
3 top priority must remain the protection of our
4 national security, we cannot and we will not
5 neglect our responsibility to safeguard and to
6 strengthen the American economy. If we fail to
7 defend America's position in the global
8 marketplace, if we neglect our duty to fight for
9 prosperity, growth, and opportunity of return, we
10 risk in a different way the security of our country
11 and the safety of our people. We recognize this,
12 and that, quite simply, is not an option.

13 Now, we all know that one of the
14 greatest threats to our economy is the erosion of
15 free competition in our markets. We have a great
16 Assistant Attorney General, a person who runs the
17 Antitrust Division in the United States Department
18 of Justice sitting to my right, Christine Varney.
19 She's as tough as they come. She's as aggressive
20 as they come. She's as knowledgeable as they come.
21 She has done a great job so far, and I think we can
22 expect even greater things from her. The President
23 chose well in making her the Assistant Attorney
24 General.

25 We've learned the hard way that

1 recessions and long periods of reckless
2 deregulation can foster practices that are
3 anticompetitive and even illegal. So we have to
4 ask, is today's agriculture industry suffering from
5 a lack of free and fair competition in the
6 marketplace? That's the central question.

7 And to answer this question, we must
8 begin by examining what we know for sure. We know
9 that a growing number of American farmers find it
10 increasingly difficult to survive by doing what
11 they have been doing for decades, and we've learned
12 that some of them believe that the competitive
13 environment may be, at least in part, to blame.

14 The Justice Department as well as the
15 USDA and this entire administration is committed to
16 protecting competition very, very vigorously. But
17 I also recognize that the enforcement of the
18 antitrust laws, while critical, does not really
19 fully address the concerns of many agricultural
20 industry leaders and stakeholders. That's why
21 we're partnering with the USDA to benefit from its
22 deep expertise in your industry and hopefully to
23 share ours on the order of regulatory issues that
24 are potentially at play.

25 That's also why we're engaging

1 directly with all of you, to listen, to learn, and
2 to determine the best ways to ensure fairness and
3 encourage success. Now, as we evaluate and as we
4 develop policy, we want to hear from you. In fact,
5 when we announced these workshops late last year,
6 we also listed -- or also issued a call for your
7 comments and for your recommendations, and so far
8 the response has really been tremendous. To date,
9 we have received more than 15,000 comments, and I'm
10 grateful that so many of you have contributed to
11 this extraordinary example of government, public
12 engagement, at its best.

13 Not only must we keep up this work, we
14 must expand this work. Together I believe we can
15 address the 21st century challenges in the
16 agriculture industry and challenges that you face.
17 Now, I'm certain that we can honor and preserve
18 your industry's essential role in our economy as
19 well as our culture, our livelihood, and our global
20 standing. Those are the goals that we have.

21 Your participation here gives me great
22 hope that we can accomplish together a great deal
23 for the days and months ahead. Secretary Vilsack
24 and I look forward to hearing from you and to
25 working with you. Thank you very much.

1 SECRETARY TOM VILSACK: So the process
2 for the next 50 minutes of this first session is an
3 opportunity for the panel who is assembled here to
4 comment, and the way we're going to essentially
5 approach this is we'll start with the Attorney
6 General and a few comments specifically, and then
7 I'm going to turn it to Senator Grassley and just
8 work down through the list asking each of the panel
9 members at least one question. Hopefully we'll get
10 through the first round.

11 When I appear before the Senate,
12 Senator Grassley has a little red light that tells
13 me that I've got to stop after a couple minutes. I
14 can't go on and on. So Senator, this is my time to
15 put the red light on you. So I'm going to take
16 advantage of that, although I'll probably pay for
17 it later.

18 So let me start the process with the
19 Attorney General, and again, thank you for being
20 here today. And I guess the first question
21 obviously is, as we begin this process and you look
22 at the priorities that your department has as it
23 relates to agriculture competition, maybe you could
24 give us a sense of what those priorities are
25 specifically and how we're going to move forward.

1 ATTORNEY GENERAL ERIC HOLDER: Sure.
2 Just before I begin, just as a point of accuracy,
3 the person who's most likely to pay for this is me.
4 Senator Grassley is one of the more active members
5 of the Senate Judiciary Committee. I'll be
6 appearing before him in about ten days or so. So
7 I'm going to be extraordinarily nice to him over
8 the course of the next hour or so. Remember that,
9 Senator, how nice I was, okay?

10 But the question that Secretary
11 Vilsack asked is a serious one, and one of our
12 first priorities was simply to work cooperatively
13 with the United States Department of Agriculture on
14 this series of agricultural workshops.

15 We want to express our commitment to
16 enforcing the antitrust laws in the agricultural
17 sector, and we wanted to work with and take
18 advantage of the deep expertise that exists within
19 USDA. We want to learn more about agricultural
20 markets and the agricultural sector generally.

21 In order to do our work well, that is
22 to be good antitrust lawyers and other lawyers in
23 the Department of Justice who might be involved in
24 this work, we have to understand the nature of the
25 industry that we are going to engage in. And who

1 better to learn from than the United States
2 Department of Agriculture?

3 We also hope to learn from other
4 government officials and I think most importantly
5 from farmers and others who are working firsthand
6 in agricultural markets. There are things that you
7 all know on a day-to-day basis, that you live that
8 we need to hear, that we need to understand if
9 we're going to do our jobs as effectively as we
10 can.

11 I think we come here as friends. We
12 come here as government officials who are not
13 afraid to hear from you, whatever is on your minds.
14 For this dialogue to make sense, for this dialogue
15 to really work, you have to be as frank as you can
16 be, understanding that we are going to be receptive
17 to that kind of interaction, to that kind of
18 dialogue.

19 My primary goal is to protect both
20 farmers and consumers from anticompetitive
21 activity. Antitrust enforcement provides increased
22 opportunities for farmers when it is done right.
23 And this woman will do it right. I promise you
24 that.

25 And we can also bring lower prices,

1 better quality, and greater choice for consumers.

2 There's not necessarily a tension between that,

3 between those two goals.

4 Maybe I can just mention a couple of
5 the Department's recent enforcement actions in the
6 agricultural sector to give you a sense of what it
7 is that we are here doing. In January we filed a
8 lawsuit that challenged Dean Foods' acquisition of
9 two dairy processing plants from Foremost Farms
10 that inflicted higher milk prices on consumers.

11 In late 2008 we filed a lawsuit to
12 block JBS S.A.'s acquisition of National Beef
13 Company -- National Beef Packing Company. We
14 concluded that the acquisition would lessen
15 competition among packers for the purchase of feed
16 cattle and thereby harm farmers who would get less
17 for their cattle. This was going to be felt by
18 consumers and bad for farmers as well.

19 Now, another major goal we have is to
20 enhance competition by working cooperatively with
21 other agencies. It's not only the Department of
22 Agriculture and the Department of Justice that are
23 engaged in this endeavor. We look at the CFTC, the
24 FTC, and we also have a great cooperation with our
25 state counterparts. Tom Miller is such an

1 important person in this effort.

2 We're working closely -- I really want
3 to emphasize -- with the Department of Agriculture,
4 with my good partner, Secretary Vilsack. We are
5 working on regulatory initiatives and ongoing
6 litigation to ensure that USDA's efforts to protect
7 farmers are successful.

8 We want to be good partners with USDA,
9 but we also want to be good partners with all of
10 you. We draw on the knowledge that USDA has in the
11 agricultural markets so that we can do our jobs and
12 do our enforcement, do our advocacy better, but we
13 will enhance our ability to do the job that you
14 expect of your Justice Department if, as I said, we
15 have a very meaningful, frank exchange of views,
16 ideas, thoughts, and concerns this morning.

17 I'm very glad to be here, and I look
18 forward to interacting with all of you.

19 SECRETARY TOM VILSACK: Senator
20 Grassley, I don't think I have to necessarily
21 introduce you to this audience, but it is important
22 for folks to know your long-standing service to
23 this country beginning in 1958, your service in the
24 Iowa legislature to '74, and then you were elected
25 to Congress in 1974 and then in 1980 elected to the

1 Senate where you serve as the ranking member on the
2 Senate Finance Committee, on Judiciary, Budget,
3 Agriculture, and Joint Tax Committees, a farmer,
4 someone who visits all 99 counties.

5 And I think the question is, Senator,
6 as you listen to Iowa farmers, as you travel around
7 the state, let us know what your thoughts are about
8 how competitive this market is and what concerns,
9 if any, you have.

10 SENATOR CHARLES GRASSLEY: I'm
11 prepared to do it. And I would ask for a point of
12 personal privilege before my five minutes because I
13 think it's very important that people understand a
14 process as much as substance because I've been in
15 Congress a long time, but I've not seen this sort
16 of cooperation between the U.S. Department of
17 Agriculture and the Justice Department, and I've
18 saw it as badly needed in the past, so I think I
19 want to compliment you, Secretary Vilsack, and you,
20 General Holder, and your Assistant Attorney General
21 Varney for doing this.

22 It's badly needed, and the cooperation
23 continued is very important as well, so I thank you
24 for doing it. It fills a big void as far as I'm
25 concerned in the issue of concentration and lack of

1 competition within agriculture. And now can my
2 five minutes start?

3 SECRETARY TOM VILSACK: Absolutely.
4 Just remember that when I'm testifying.

5 SENATOR CHARLES GRASSLEY: Okay.
6 Well, it's obvious to me because I've talked about
7 it so long, so Iowans would not be surprised if I
8 said that there's not enough competition, too much
9 concentration, and I see it not only as a problem
10 for today but as a problem for young farmers
11 getting started, getting into agriculture, keeping
12 the next generation of family farmers strong, and I
13 say all of this in the enhancement of the
14 institution of the family farm.

15 We use the term family farm often
16 loosely, but I consider it a very important
17 institution that's a basic of American agriculture
18 and that that needs to be preserved. Bigger isn't
19 per se bad, but it can lead to predatory business
20 practices and behavior. And that's what we've got
21 to be concerned about and the legitimacy of
22 government not being a partner but for sure being a
23 referee.

24 More specifically, packer ownership of
25 livestock is a problem, and I've been working on

1 that a long time, but when you're up against the
2 American Meat Institute and a lot of the other
3 strong people in Washington, D.C., it's difficult
4 to get around that, so we haven't made much
5 progress in that area.

6 Secretary Vilsack already spoke about
7 the statistics on the diminishing of the spot
8 market. We need to take legislative action and/or
9 regulatory action to do that. We should not have
10 very much, if any, mandatory arbitration. There
11 ought to be alternatives.

12 I think we have to have -- what goes
13 on here at this meeting between the U.S. Department
14 of Agriculture and the Department of Justice ought
15 to be formalized in some way, and so I bring to
16 your attention my Agricultural Competitive
17 Enhancement Act, ACE for short. Our bill would
18 formalize this sort of dialogue because U.S.
19 Department of Agriculture being involved with the
20 Department of Justice -- and I don't say this to
21 denigrate anything that the Justice Department
22 today is doing, but I think I can say under both
23 Republican and Democratic presidents in the past
24 that there has not been enough dialogue like you
25 see today.

1 And I hope that it leads to what I
2 would call competition guidelines. I think these
3 must be issued by the Department of Justice as it
4 applies strictly to agriculture. And the ACE
5 legislation would beef up antitrust enforcement.

6 In the process of what you're doing,
7 and we won't know down the road for several months
8 until you get your hearings done, but I don't want
9 anything to be done that stifles innovation, and I
10 want to promote not only for agricultural
11 competition, but this also applies to what we need
12 to be doing through regulatory reform on Capitol
13 Hill in regard to Wall Street and our financial
14 institutions. We need more transparency. We need
15 more openness in the market, and with transparency,
16 I think you get accountability, and you get a lot
17 more self-regulation and consequently then less
18 requirement for people in USDA with Packers and
19 Stockyard or with the Justice Department, what they
20 have to do through enforcement of law. Thank you
21 very much.

22 SECRETARY TOM VILSACK: Thanks,
23 Senator. Senator is reserving his time.

24 I want to turn the podium now and the
25 direction to Congressman Boswell, also someone who

1 has served our country in the military with
2 distinction, first elected to the U.S. House of
3 Representatives in 1996. Prior to that he was the
4 president of the Iowa Senate where I served with
5 him and had the pleasure and privilege of doing so.

6 He's been named the Chair of the
7 Agricultural Subcommittee on General Farm
8 Commodities and Risk Management focused on crop
9 insurance. He previously served as Chair of the
10 Agricultural Subcommittee on Livestock, Dairy, and
11 Poultry. He knows quite a bit about farming. He's
12 traveled throughout this state and throughout the
13 country.

14 Congressman, let me basically direct
15 the same kind of question as I did to the Senator.
16 Your thoughts and attitudes about the competitive
17 circumstances that farmers have today and how fair
18 and balanced the process is.

19 REPRESENTATIVE LEONARD BOSWELL: Well,
20 thank you, Mr. Secretary, and I'd like to have my
21 personal point too, follow the Senator, you know.
22 We've got to work together, so hope you think about
23 that. Equal rights. Yeah. Thank you, Attorney.

24 First off, I talked to the Attorney
25 General from Missouri a little while ago, and he

1 said something about the fact that he was here, and
2 we chatted a minute. And I said, well, I started
3 there in Missouri, just barely, south of Lamoni or
4 Davis City, Decatur County, on the first ridge into
5 Missouri. I was born in a farmhouse which stood
6 until just last year. But anyway, I do have a few
7 roots, if you will.

8 But move on from that, I've known
9 Secretary Vilsack as counselor, as Senator, as
10 Governor, and candidate, if you will, and as
11 Secretary. I have to applaud the effort he's put
12 forth in every category that I've known him in for
13 all those years, and I just want to say that.

14 And General Holder, we've not had this
15 personal contact I've had with Secretary Vilsack,
16 but I've followed you for a long time. Thank you
17 for stepping up to the plate and doing what you do.
18 I appreciate it very much. We all do.

19 Back to the situation here, it's very
20 challenging. We know that. It's a challenging
21 time. It's a historical time. And I look around
22 the audience, which I have for a few moments, and
23 recognize a lot of faces, people I have engaged in
24 conversation with over the production of
25 agriculture and how we feed this hungry world

1 that's growing by 90 million, they tell me, every
2 year. This is a big factor. It's a big thing.

3 I personally think there's room for
4 all the different avenues of production
5 agriculture to participate, and we're still going
6 to have to really scramble in our research and all
7 the things we got to do to be able to do that, and
8 I think we can. I believe we can do that. I'm an
9 eternal optimist because I come from the farm, and
10 I believe that. And I think we can.

11 And so what you're doing here today as
12 holding this together, to sit down and to listen to
13 each other and to talk about it and work it out,
14 and I'm very proud to look out here and see these
15 yellow shirts, the Commercial Food Workers. Yeah.
16 We can grow it. We can produce it. We can go
17 through all this, but somebody has to, you know,
18 take it through the processing and the packaging
19 and put it out there on the shelf, and these are
20 the men and women that do that, and we ought to be
21 very appreciative of the efforts that they do.

22 And look out here at President Denson
23 and realize what this fine institution does for us
24 and many things to do with agriculture and
25 opportunity and the FFA. I talked to one of those

1 young lads a little while ago. I said "I had a
2 jacket like that. I don't know where it's at right
3 now but probably wouldn't fit me anyway."

4 But you know, there's so much
5 opportunity, but there's a big, big challenge, and
6 we've just got to have the dialogue and be willing
7 to talk together, and we can do this. We can.

8 And so, Mr. Secretary, there's a need.
9 I concur with many of the things that have been
10 said already, with my colleague Senator Grassley.
11 I've talked to Chairman Peterson of the full ag
12 committee from Minnesota. He understands what goes
13 on out here as well as you do.

14 And we're going to start the hearings
15 next month, the field hearings, on the next farm
16 bill, and we're still adjusting to the current one,
17 as you well know, but you know, we did some things
18 in the last farm bill that a lot of you, I think,
19 are interested in. Senator Grassley mentioned, you
20 know, the mandatory arbitration and the dealing
21 with contracts and different things, to get
22 daylight on it, to get it out there where people
23 can see what's going on and have fairness and
24 opportunities for the producers, you know, to deal
25 with this contract agent or whoever and have

1 fairness.

2 And I think if we keep that in mind that
3 fairness and transparency, that we can do these
4 things, and I am so pleased that, you know, we've
5 got two major research companies that work very
6 hard to try to be able to get us the opportunity to
7 increase production and meet this hunger that's
8 around this world, and it's going to grow. We've got
9 to have fairness and openness, and we can do this.

10 So I'm hearing out there from the
11 farmers that I have a lot of contact with and many
12 others that stay on focus and make sure that we can
13 do this to the best we possibly can do it, whether
14 it's the education process, the research process,
15 the working together, on the fairness, the
16 openness, and so on so this country of ours can
17 continue to lead in this world the food production
18 and doing the things we have been known for doing
19 for a long, long time.

20 We can still do it, but we've got a
21 big challenge right now, and you know it, and I
22 could spend another five minutes talking about
23 that, but I want to go back. I want to hear -- I'm
24 here to listen today. I want to learn. I want to
25 go back to my committee. I want to go back to my

1 chairman, and I want us to sit down and deal with
2 the Senate and the House and those of you that meet
3 all the different aspects of this and do the very
4 best we can possibly do, and I think that's a good
5 thing.

6 Thank you very much. I'm glad to be
7 here.

8 SECRETARY TOM VILSACK: I first met
9 Lieutenant Governor Judge in her capacity as a
10 mediator during the farm crisis of the '80s when I
11 was representing farmers who were being foreclosed
12 on, and she was trying to keep farmers on the farm.

13 We then served together in the Iowa
14 Senate for a period of time. She was then elected
15 as the first woman Secretary of Agriculture for
16 this great state. Then in 2006 she was elected as
17 our Lieutenant Governor. So in addition to having
18 all those elected offices and providing service as
19 the mediator, she also, along with her husband,
20 Senator Judge, have been in the farming business, so
21 she knows a good deal about agriculture.

22 So Governor, let me ask you this
23 question: As you deal with issues starting in 1980
24 all the way through the process, talk to me a
25 little bit about the smaller producers and the

1 challenges that you see smaller producers might
2 have in this competition situation.

3 LIEUTENANT GOVERNOR PATTY JUDGE:

4 Thank you very much, Secretary. I'm not going
5 to -- since I'm not in Congress or the U.S. Senate,
6 I don't know that I have to have such tight rules
7 about my time. I'm a farmer from southern Iowa,
8 and we talk pretty slow.

9 I did have a couple of great
10 colleagues with the time I spent in the Iowa
11 Senate, and two of them are here with me today,
12 Congressman Boswell and Secretary Vilsack, great
13 friends, and it's good to see them again, and also
14 to General Holder, it's good to have you back in
15 Iowa. Come any time. We like to have you here.

16 I'm going to use the time to address
17 the question that the secretary asked me in two
18 specific areas because I believe that they are
19 areas that need to be addressed, must be addressed
20 if independent farmers are to have any opportunity
21 for success in the future, and those two areas are
22 first of all mandatory price reporting, and the
23 second area is the availability of both short- and
24 long-term financing for independent farmers.

25 Five years ago when I was in Secretary

1 Northey's seat, Iowa made a great push to make some
2 significant changes in the federal mandatory
3 pricing laws. The changes that we were seeking
4 were to bring fairness and transparency to the
5 marketplace, to give independent producers valuable
6 information that they have to have in order to make
7 marketing decisions. Unfortunately, at that time
8 we were only able to make four modest changes that
9 were incorporated into the new law, and I want to
10 state that Iowa Pork Producers and Iowa Cattlemen's
11 Association both worked very hard with many of us
12 to make more significant changes than we were able
13 to accomplish.

14 The changes that were accomplished
15 five years ago were the addition of a schedule for
16 net price distribution, expanded sow and boar price
17 reporting, and requirements that USDA ensure
18 producers' confidentiality when they make an
19 inquiry about packer reporting.

20 Having said that, if independent
21 producers are to have the transparency and access
22 to markets, we know that mandatory price reporting
23 law needs to include the addition of reporting of
24 wholesale pork products just as it is done with
25 boxed beef and boxed lamb today. In addition, the

1 law should require greater scrutiny and disclosure
2 of potential formula prices that may be being used
3 to avoid reporting negotiated prices.

4 It is my understanding that USDA
5 recently began a quarterly compliance report, and
6 that report is to include at a minimum the total
7 number of audits that have been conducted, the
8 total number of violations that have been found,
9 examples and descriptions of violations, and the
10 number of packers required to report under law by
11 species, and notation of any unresolved violations
12 or pending violations.

13 Now, it is very important that that
14 report is accurate, and it's very important that
15 that report is readily accessible to livestock
16 producers. It's also my understanding that in the
17 ten-year life of the present reporting law, not one
18 firm as of yet has been fined for a violation.
19 With closer scrutiny and more timely reporting,
20 violations must be identified and fines imposed as
21 was intended.

22 Mandatory price reporting is a
23 critical part for an independent producer today
24 just as it was five years ago, and the next
25 livestock reporting law that's passed and

1 implemented by USDA should begin immediately for
2 greater independence and authority to your audit
3 and compliance branch from the market use and
4 livestock and seed branch because there is a
5 feeling that that is perhaps too heavily influenced
6 by industry groups.

7 Finally, closer scrutiny of the
8 formula -- and I think Senator Grassley made
9 reference to this -- of the formula and forward
10 contracts in sales is needed to ensure that firms
11 are not skirting the reporting of their negotiated
12 sales.

13 The second issue that I'd like to
14 mention briefly is availability of financing for
15 independent or small family farmers. With the
16 tightening of credit requirements and consolidation
17 of banks, which results in the loss of locally
18 owned and community-invested banks, and changes
19 also in the Farm Service Administration lending
20 policies. That all of those things have happened
21 over a period of years since the farm crisis, and
22 that sets up for us really a perfect storm that
23 allows large vertical integrators to step into a
24 void, and they literally then assume the role of
25 banker to family farmers across this country.

1 The integrator today is supplying
2 feed, livestock, and in many cases loans for
3 construction of facilities for family farmers. And
4 the farmers are, in fact, today supplying skilled
5 labor.

6 Although many find this system to be
7 objectionable and believe that vertical integration
8 is, in fact, the leading cause of our concentration
9 problems, few farmers have the financial capacity
10 to farm on their own and find themselves in a
11 catch-22 situation. This situation will not change
12 without a change in thinking on a national level
13 regarding agricultural financing today.

14 And I would suggest respectfully a
15 review by USDA regarding your lending programs,
16 both your direct and indirect loan programs, to see
17 if there isn't some way that we can help bring some
18 more stable financing for independent producers.
19 And thank you very much.

20 SECRETARY TOM VILSACK: Thank you. I
21 do want to say in response to the last comment that
22 we actually have engaged in a recent review of the
23 credit policies, and we have made some changes as
24 it relates to poultry and pork producers and the
25 relationship that they have with integrators to

1 make sure that we're not undercutting the smaller
2 independent producers, making it more difficult for
3 them to access.

4 In fact, we just in December issued
5 rules on poultry and just recently applied those
6 rules to pork, so we are cognizant of that, and
7 we've also continued to focus on additional
8 guaranty and direct loan opportunities in a more
9 aggressive effort on beginning farmers.

10 Let me turn the attention now to
11 Attorney General Miller, if I might. General,
12 you've established a farm division in your office
13 which I think has undertaken many cases to
14 represent farmers who have been engaged in and
15 subject to certain circumstances that might
16 constitute fraud or illegal activity, and what I'm
17 interested in from your perspective and what you've
18 seen from that farm division is what the most
19 problematic aspect in marketing is relative to
20 competition within this state from your
21 perspective.

22 ATTORNEY GENERAL TOM MILLER: Thank
23 you, Secretary Vilsack, and thank you to Secretary
24 Vilsack and Attorney General Holder for developing
25 this relationship to deal with consolidation, and

1 concentration, and antitrust in the agriculture
2 area. Like to all the other speakers, I think it's
3 great in the public interest for a lot of reasons,
4 but let me just mention one that's practical and
5 that is important, and that is that the antitrust
6 law is fairly limited. And the current judiciary
7 interprets it even more limited than many of us,
8 Chris and I and others, think should be the case.

9 So to combine antitrust and the
10 authority of the USDA which includes unfair
11 practices, and I think deceptive practices, is a
12 very important combination and complement. It's a
13 little bit like we do in the Attorney General's
14 office in Iowa that if we have a set of troublesome
15 practices, we will look at the antitrust law, but
16 if we can also develop a theory on the consumer
17 protection law, we can have a much, much stronger
18 case, so you know, what you guys are doing is just
19 great.

20 And while this relationship is very
21 important, Attorney General Holder mentioned
22 another one that's very, very important in my view,
23 and that is the relationship between the state
24 attorney generals and the Department of Justice and
25 the other federal government, and let me tell you,

1 this relationship today is the best that it's been
2 in the history of the country. The relationship
3 that we have with Chris Varney working in
4 antitrust, we've never had that kind of
5 relationship before.

6 We're working with many parts of the
7 Justice Department in mortgage fraud, Lanny Breuer
8 who's head of the Criminal Division; Tony West
9 who's head of the Civil Division. We're developing
10 a partnership to work on these cases and work
11 together to protect the public as never before.
12 People like Tom Corelli and David Ogden before he
13 left, we worked with very closely.

14 I've been around -- still a relatively
15 young man, but I've been around quite a while, and
16 I've seen many administrations, Democrat and
17 Republican, and we've never had this kind of
18 relationship of cooperation, openness, trust, and
19 respect as we have today, so General Holder, thank
20 you very much for your working with the states in
21 this really unique way but, more importantly, a way
22 that's just so much in the public interest.

23 In terms of concentration and
24 competition in agriculture, we've had sort of a
25 preoccupation, some would say an obsession, in our

1 office in dealing with the contract producers and
2 contract companies, particularly in pork but in
3 seed as well. We've worked over a decade in this
4 area. We started by developing a model contract in
5 seed and livestock. Neil Harl was very important
6 in that effort, and you'll hear from Neil, I think,
7 this afternoon. I'm looking forward to his
8 comments.

9 Then we developed a grower's or
10 contractor's bill of rights that we went to the
11 legislature with to establish certain rights. We
12 got close to passing that but only got one part of
13 it passed, and that was the priority, a lead
14 priority for the contract growers, contract
15 producers, in terms of the proceeds.

16 But we don't give up. We had some
17 settlements with Smithfield and others, and we
18 incorporated many of those bill of rights into
19 those agreements, such things as the contracts have
20 to be in plain language. You can't retaliate
21 against a grower or producer if he or she is a
22 whistle-blower or engages in collective activity.
23 You can't terminate the contract over a period of
24 time if a significant investment has been made.
25 The agreement with Smithfield provided that they

1 had to buy 25 percent of their pigs on the open
2 market, so you know, we've worked in that area, and
3 it's a very important area.

4 We were concerned initially that in
5 long-term production it would be like chicken in
6 other parts of the country. I don't think that's
7 happened. There is a certain amount of rights and
8 ability to deal with these kinds of issues because
9 of our efforts and the efforts of many others, but
10 we continue to think that that's an important
11 relationship, one that has to have some balance and
12 some respect and authority for the farmer.

13 With some of the other AGs, we've
14 filed some comments. We were among those -- did
15 you say 15,000 comments that have been made? We've
16 joined those comments, and you'll hear from three
17 of my colleagues this afternoon, including Attorney
18 General Steve Bullock of Montana. He's the
19 principal author of these comments that we joined
20 in and worked with him, and he'll talk more about
21 them, but it covers the range of issues dealing
22 with concentration and competition in agriculture,
23 including seed, grain transportation, cattle, hogs,
24 chicken, and dairy. So Steve is here with Chris
25 Koster who's the Attorney General of Missouri. The

1 Attorney General of Ohio, Rich Cordray, will join
2 him this afternoon. You'll hear more about our
3 statement here from them and particularly Steve,
4 who's taken a lead here.

5 But finally, you know, I would mention
6 competition in regard to seeds. This is an issue
7 that's before the agriculture community and before
8 all of us. There was a recent AP story that I thought
9 was very comprehensive that indicated that in soy,
10 in soybeans, Monsanto seeds, their wonderful trait
11 that's Roundup Ready resistant, was in 95 percent
12 of the seed in soybean; about 80 percent or maybe
13 82 percent in corn.

14 Additionally, we've heard reports of
15 price increases in seed this year, initially as
16 much as 40 percent. That didn't seem to bear out,
17 but perhaps 25 to 30 percent has been the price
18 increase, although a little more research has to be
19 made there.

20 So Monsanto's place in seed is
21 something that's a competitive issue that's before
22 all of us and that we've acknowledged, that we're
23 working on. Monsanto has acknowledged that the
24 Justice Department is working on it, so you know, I
25 certainly would mention to Secretary Vilsack and

1 Attorney General Holder that issue.

2 And finally, you know, Tom, welcome
3 back. We're proud that you're in this cabinet.
4 We're proud that you're the Ag Secretary, and we're
5 proud of the things that you do in that office.

6 SECRETARY TOM VILSACK: Thank you.
7 It's hard to believe that Tom Miller was first
8 elected as our Attorney General in 1978, and I can
9 tell you I travel around the country and visit with
10 a lot of Attorney Generals and a lot of officials.
11 Believe me when I say this. He is considered to be
12 one of the foremost attorney generals in this
13 country, so we are fortunate to have him serve us
14 for as long as he has served us. General, thank
15 you.

16 Someone who has also, I think,
17 received a lot of attention nationally is our
18 Secretary of Agriculture. I want to turn to him
19 now. I think folks know that Secretary Northey is
20 a fourth generation Iowa farmer, grows corn and
21 soybeans in a farm near Spirit Lake. He started
22 with his grandfather, Sid, after graduating from
23 Iowa State.

24 I've had an opportunity to spend a
25 good deal of time with the Secretary in Washington,

1 D.C. on a variety of issues, and I think we have a
2 very good and positive relationship.

3 And so Mr. Secretary, let me ask you,
4 as you really focus on your day-to-day activities,
5 I know that you're concerned about this issue of
6 competition and consolidation and people getting a
7 fair shake in the countryside. Your thoughts about
8 the current competitive circumstance in Iowa and
9 what you think we ought to be focused on.

10 SECRETARY BILL NORTHEY: Well, thank
11 you. Thank you for having this hearing here. I
12 appreciate it very much. Great to have a room full
13 of Iowans and others here as well. It certainly is
14 an important issue and something that needs to be
15 talked about.

16 As I get around the state, talk to a
17 lot of folks about what's going on in ag, and one
18 thing consistent about agriculture is it changes.
19 But certainly changes in the last ten years have
20 been fairly dramatic. Iowa is still No. 1 in corn
21 and soybean production. It's a very logical place
22 to have these conversations, spend some time
23 talking about those inputs and what the impact has
24 been in the last few years on inputs and the impact
25 on producers.

1 One of those things that I hear from
2 producers out there as a concern, as General Miller
3 mentioned, was concerns about price increases in
4 seeds. We've seen those price increases. In fact,
5 about ten years ago, roughing out the numbers, we
6 probably spent a little less than a billion dollars
7 a year as Iowa farmers on seed. We plant about
8 13 million acres of corn, 10 million acres of
9 soybeans. That number is probably closer to
10 \$2 billion a year right now.

11 Now, in that same time, we've actually
12 seen a dramatic increase in the value of what we
13 produce as well, prices and yields, and so we went
14 from about 5 or \$6 billion a year, maybe \$7 billion
15 a year, crop production valued in the state to now
16 we sell about \$10 billion worth of crop. We
17 probably produce about \$12 billion worth of crop,
18 so we've nearly doubled the amount, in part because
19 of prices, in part because of yields. Certainly
20 that new technology has been a part of that.
21 That's really helped.

22 The demand that we've had overseas and
23 certainly in our ethanol plants have increased the
24 value, and that has been part of the reason that
25 higher technologies that bring better yields have

1 increased in value to the producer. If you're
2 getting \$2 a bushel and you get 20 extra bushels by
3 doing something, that's worth \$40 an acre. If
4 you're getting \$5 a bushel for that corn, then
5 that's worth \$100 to you, so splitting that
6 difference or sharing that makes some sense.

7 Now, we've also seen the price of that
8 drop, that crop drop a little bit. We haven't
9 necessarily seen the price of those inputs drop,
10 and I think that's the concern that I hear of
11 producers out there.

12 There's always this tension certainly
13 in not wanting to lose the encouragement of
14 developing new technologies. Certainly corn and
15 soybean producers have seen a lot of new
16 technologies as we compare our industries to wheat
17 and some of the other products out there that
18 haven't been a way for investment to happen and get
19 a return on investment in those other industries.

20 We do see benefits here. But as you
21 compare and contrast, we kind of talk about three
22 sets of inputs. We talk about as far as crop
23 production, we talk about our seed; we talk about
24 our weed control, our herbicides, and we talk about
25 fertilizer. They each have different personalities.

1 Seed certainly has increased in value, and we've
2 seen that technology, and we're certainly increasing
3 in price as well.

4 Herbicide has been more flat. It
5 actually has gotten some additional competition
6 from seed, Roundup Ready and other kinds of things,
7 and so that cost of controlling those weeds has
8 been fairly flat and probably generated less
9 investment in part because of that as time has gone
10 on as well.

11 And then you contrast that with
12 fertilizer. We've seen some big movements in
13 prices of fertilizer the last few years. Two years
14 ago we had record high fertilizer prices. Certainly
15 there's always this concern of how narrow is that
16 production capacity to that fertilizer. Are there
17 folks out there that can set prices? It sure felt
18 like it at the time. Two years ago, as we saw
19 thousand dollar anhydrous ammonia and high costs of
20 P&K as well.

21 And yet fertilizer is very -- what we
22 sometimes call fungible. It can move around, and
23 there's an international market for it, and
24 although it may not quickly come back down in
25 price, it certainly has come back down in price.

1 And so each of these have their own
2 characteristics in how they act, and we've seen
3 fertilizer have a competition that has brought that
4 price down to some extent. There's still concerns
5 both at the local level, how many folks do you have
6 to buy the stuff from, as well as the national or
7 international level of how many producers are there
8 out there. But we've certainly seen, because of an
9 international impact, that prices have come back
10 down again from the peak as well.

11 So there's a tension in all these
12 areas. They each have their own personalities. I
13 think we have to look at them each differently.
14 They certainly impact producers, and for producers
15 that 10 years ago, 15 years ago were producing 250
16 or \$300 an acre and now are producing 700 or
17 \$800 an acre, inherently there's some increases in
18 cost there, but that doesn't necessarily answer the
19 question of whether we have competition.

20 I guess one last point would be on the
21 selling side. It's been an interesting time as
22 we've added -- certainly during your tenure,
23 Secretary, as Governor, we've added ethanol plants.
24 We've actually added market to the corn demand out
25 there.

1 We've maybe reduced and consolidated
2 some of the grain buyers that are out there. Some
3 of the co-ops have gone together, and so in some
4 areas we see less, but at the same token we have
5 39 ethanol plants in Iowa; we produce more
6 ethanol in this state than anybody else does.
7 Those are new markets that didn't used to be there,
8 and that competition has in some cases created a
9 stronger market, a market that's closer to the
10 Chicago price. We talk about the difference
11 between the local price and Chicago price as the
12 basis. That has tightened up as we've gotten more
13 competition, so certainly competition works.

14 But we have a lot of concerns in the
15 livestock industry from folks, and that always
16 balances tension between competition and
17 efficiency, and that's one of the challenges that
18 you all have is to listen to the folks as folks
19 outline specifics in those areas. So thank you for
20 being here and the chance to say a few words.

21 SECRETARY TOM VILSACK: We have six
22 minutes left, so this is the same question to all
23 the panelists, and obviously, Christine, I'm going
24 to give you a chance to close. I'm going to give
25 the panelists an opportunity.

1 If there was one issue or one
2 improvement that you would want us to focus on
3 specifically as part of this conversation, what
4 would it be? Senator?

5 SENATOR CHARLES GRASSLEY: I think to
6 make sure that the arrangement that this meeting
7 and your series of hearings exemplify that we
8 formalize the arrangements between U.S. Department
9 of Agriculture and the Department of Justice to
10 work together, and from my standpoint, that means --
11 I've been critical of past Departments of Justice
12 maybe not paying enough attention to agriculture,
13 not enough institutional knowledge in agriculture
14 to help that -- and to formalize it some way so that
15 when we have questions of the antitrust laws being
16 enforced that there's input from the Department of
17 Agriculture on that point.

18 And then even though it might not be a
19 part of this discussion but more vigorous
20 enforcement of the Packers and Stockyards Act.

21 SECRETARY TOM VILSACK: Congressman?

22 REPRESENTATIVE LEONARD BOSWELL: Well,
23 let me concur with Senator Grassley. Market
24 transparency. I just mentioned this. Very
25 important to be able to know what you're dealing

1 with as you're trying to make the sale and so on
2 and the market transparency. And it's quick. It's
3 up to date.

4 And then as we go into this next farm
5 bill, which will start right away, as I mentioned,
6 that we take advantage of the input from everybody
7 that's doing the hands-on, regardless of what part
8 that you're playing in agriculture. For example,
9 fruits and vegetables, before this last farm bill,
10 they said "Leave us alone." But in this farm bill,
11 they came to the table, which was their right to do
12 so, and it was reasonable.

13 And so I'm concerned about what's
14 happening to our base line in production
15 agriculture as we go in this next farm bill for
16 what we had produced the last time and what we're
17 looking that we may have to do now because of risk
18 management and so on. So I guess I've added two or
19 three other things.

20 SECRETARY TOM VILSACK: Okay. Very
21 good. Governor?

22 LIEUTENANT GOVERNOR PATTY JUDGE: I
23 think it's been said. I hate to make this, you
24 know, just keep being unanimous here, but market
25 transparency is critical as we go forward, and I

1 would also say, as Senator Grassley said, that it
2 is also critically important that the Packers and
3 Stockyards Act is enforced and that cooperation
4 between your agency and General Holder's agency
5 will be critical in that.

6 SECRETARY TOM VILSACK: General?

7 ATTORNEY GENERAL TOM MILLER: Well,
8 I'm a lawyer for better or for worse, so this is a
9 little technical, but I'll try and make it as
10 understandable as possible.

11 There's two parts of dealing with
12 these concentration issues as we've discussed.
13 There's the antitrust law, and there's the other
14 provisions, including under Packers and Stockyards,
15 the unfair practices.

16 I think on that side, we need to --
17 you need to and we need to work with you to more
18 develop the non-antitrust laws to deal with
19 concentration. And obviously you're talking about
20 that, but there's more that can be done there, and
21 that law can be explored.

22 On the antitrust side of it, it goes
23 back to a breakfast meeting that we had with Chris
24 Varney, the Attorney General, Steve Bullock, Chris
25 Koster, myself, and probably 25 other AGs about

1 antitrust law generally, that the interpretation of
2 the antitrust law swings, and in the '60s and '70s it
3 swung to a point where enforcement, it's very
4 broad, and it swung back to a very narrow
5 interpretation currently.

6 And what we talked about is how we can
7 bring cases and how we can do things to try and
8 bring the antitrust law back more to the middle.
9 The interpretation by the judiciary is a big
10 challenge, but I think that's a very important part
11 of any kind of antitrust enforcement that Chris and
12 the attorney generals, and Jon Leibowitz, the Chair
13 of the Federal Trade Commission, was also an
14 important layer here, we've talked about and
15 hopefully we can work on.

16 SECRETARY TOM VILSACK: Secretary?

17 SECRETARY BILL NORTHEY: Let me just
18 add one issue to the mix here, and I think most of
19 these issues, we're looking back on. We're looking
20 at what has happened, but we actually have an issue
21 that's coming at us that we have a chance to kind
22 of set the stage for, and that is some of these
23 biotechnology traits will come off patent and the
24 understanding of how to put those -- how we treat
25 those as they come off patent that's fair to the

1 companies, fair to the industry, and fair to
2 producers.

3 I think we actually have an
4 opportunity to be able to set the stage and the
5 arrangements for that in a way that's proactive
6 before that happens that could be very constructive
7 to producers and companies decades into the future.

8 SECRETARY TOM VILSACK: Well, I'm
9 going to finish this segment by asking the
10 Assistant Attorney General, Christine Varney, to
11 make a few comments in her role as she looks at
12 antitrust laws, protecting farmers, smaller
13 operators and consumers.

14 Christine, be interested in your
15 thoughts about next steps.

16 ASSISTANT ATTORNEY GENERAL CHRISTINE
17 VARNEY: Thank you very much, Secretary. If I can
18 start by addressing what the panelists asked they
19 would like to see, and I can absolutely commit on
20 behalf of myself and my boss, the Attorney General,
21 Senator Grassley, that you will continue to see the
22 unprecedented cooperation and collaboration between
23 our office and the USDA.

24 As a matter of fact, I have hired
25 someone formerly from the state attorney general's

1 office in Texas, Mark Tobey who's here today, who
2 specializes in agriculture. I have a Deputy
3 Assistant also here today, Phil Weiser, who
4 specializes in agriculture. Bill Stallings who's
5 the lead of our agriculture enforcement team, a
6 long-time career lawyer, is here in the back. So
7 you have our commitment to work with all the folks
8 that are here from USDA in an unrelenting quest to
9 find the right balance for farmers, producers,
10 consumers across the whole agriculture chain.
11 We're going to do that in this administration.

12 To Congressman Boswell, market
13 transparency. We care deeply about transparency --
14 and Lieutenant Governor, we understand that
15 transparency helps maintain a competitive
16 marketplace. So you can be sure that we're going
17 to be working closely with USDA to figure out where
18 our law, our jurisdiction, and their law and their
19 jurisdiction overlap so that we can get as much
20 transparency as is possible into the system.

21 Packer and Stockyard Act enforcement.
22 USDA has tremendous expertise here, but we got a
23 lot of lawyers at DOJ that can back you up. So
24 we're looking forward to and have started the
25 conversation at the staff level of how we can work

1 collaboratively to ensure the federal government is
2 taking full advantage of the authority that's
3 delegated to us in the Packer and Stockyard Act.

4 Biotech, things coming off patent.
5 You know, patents have in the past been used to
6 maintain or extend monopolies, and that's illegal,
7 and you can be sure, Secretary, that we are going
8 to be looking very closely at any attempt to
9 maintain or extend a monopoly through an abuse of
10 patent laws.

11 So that's generally -- I think I can
12 assure each member of the panel -- I've been
13 working with Attorney General Miller for not quite
14 30 years but for a long time, and he knows that he
15 can continue to count on the offices of the
16 Department of Justice in the Antitrust Division to
17 work across the board on issues as they confront
18 the state attorneys general, not only in
19 agriculture, but really, you know, you folks are on
20 the front lines, and your attorneys general are the
21 people that we look to to understand what is
22 affecting you in your life every day and what's our
23 appropriate role to support the attorneys general
24 or to collaborate with them, and we will continue
25 to do that.

1 You know, I got here a few minutes
2 early, so I was able to talk with a lot of folks
3 that are here today. I got to talk with the Food
4 and Commercial Workers for a while. I got to talk
5 with a lot of farmers who are here. My friends
6 from the co-ops are here.

7 And there's a couple of things that I
8 would say. You know, you touched on it a little
9 bit. The first question was, you know, what can
10 antitrust really do? Well, there's a number of
11 things. When we see mergers, we look closely at
12 the resulting concentration from a merger. As the
13 Attorney General referenced, we recently sued Dean
14 Foods because we think it resulted in too much
15 concentration in milk in Wisconsin, Illinois, and
16 Michigan, and we were joined by the attorneys
17 general in those states in suing to break up that
18 merger to try and get competition back in to get a
19 better price to farmers and lower prices to
20 consumers.

21 We did JBS last year, same thing. We
22 will continue to carefully and closely scrutinize
23 every single merger that comes before us, look at
24 it on its facts, and make a decision on the facts
25 of the merger. If it doesn't result in undue

1 concentration and in lessening of competition and
2 provides efficiency and helps farmers and growers
3 get better prices and get more efficiency in what
4 can get to consumers, that will be okay with us,
5 but those that don't, we will stop. They will not
6 go through during this Department of Justice.

7 The other thing that we look at, and a
8 lot of you have talked to me about this this
9 morning as I moved around, big companies in the
10 chain, wherever they are, and your views about how
11 much power they have.

12 Well, as one of my panelists said,
13 look, in the United States -- I think it was
14 Senator Grassley said big is not bad. But with big
15 comes an awful lot of responsibility. When you
16 have a tremendous amount of market share, you have
17 the responsibility to behave in ways that keep the
18 competitive playing field open. You cannot engage
19 in acts that are designed to protect or extend your
20 monopoly. So we look very, very closely across all
21 sectors wherever you see an enterprise that has
22 enormous market power.

23 And you know, America is a great
24 country because we have not only great farmers and
25 great small entrepreneurs, but we've grown some of

1 the best companies in the world that are worldwide
2 leaders, and for the most part I believe those
3 companies take their obligations under the
4 antitrust laws very, very seriously. But we take
5 very seriously our obligation to enforce those
6 laws, so we look very carefully.

7 The final thing I would say is
8 something I think a lot of you in Iowa are familiar
9 with. We have criminal authority in the antitrust
10 division, and it is illegal for competitors to sit
11 down together and fix prices. That's what you
12 saw -- I don't know if you all out here have seen
13 the movie that just came out called The Informant,
14 and it's a movie about the lysine cartel, and we
15 will, wherever we find -- particularly in the
16 international sphere, wherever we find price fixing
17 like that, we will prosecute that criminally.

18 So you have my commitment that we're
19 going to do everything we can to make sure that
20 it's a competitive agriculture economy, that
21 farmers, growers, packers, processors, are all
22 making a decent wage, and we're getting American
23 consumers food on their table that's safe and
24 healthy and a decent price.

25 SECRETARY TOM VILSACK: General,

1 before we break for a short break, do you want any
2 concluding comments?

3 ATTORNEY GENERAL ERIC HOLDER: Well,
4 you can see why I have such confidence in this
5 woman, right? I mean I would say that what we're
6 looking for is, like everybody has indicated,
7 transparency so that everybody has a fair look into
8 what's actually going on.

9 But the overriding concern we have in
10 the Justice Department is maintaining fairness.
11 Doesn't mean we're going to put our thumb on the
12 scale. We want everybody to have a fair shot. I
13 think Senator Grassley is right. As Christine
14 indicated, you know, big is not necessarily bad,
15 but big can be bad if the power that comes from
16 being big is misused, and that is simply not
17 something that this Department of Justice is going
18 to stand for. We will use every tool that we have
19 to ensure fairness in the marketplace.

20 It is important because at the end of
21 the day, this is a national security matter. We
22 talk about national security things in ways that --
23 terrorism and all that. If we do not have a strong
24 economy, a strong agricultural sector, this country
25 is not as strong as it can be, as strong as it

1 needs to be. And for us, this is a priority in
2 this Justice Department.

3 We're going to use all the tools that
4 we have, the attention that we can generate in
5 cooperation with our partners at USDA to make sure
6 that we are as effective as we can, that we are as
7 responsive as we can be in dealing with the issues
8 that you confront on a day-to-day basis.

9 At the end of the day and as we look
10 back on our time in this administration, I hope
11 we'll be able to say that we had a measurable
12 impact on the lives of people in this state and
13 other places, that their day-to-day lives -- that
14 because of what we did that their lives have
15 improved, and we don't lose sight of that.

16 You know, we talk about big and lofty
17 ideals, and projects, and programs, but we never lose
18 sight of the fact that what we're talking about are
19 our fellow citizens and how they live on a
20 day-to-day basis, and so those are our guides. We
21 are, as I said, bound and determined to do the
22 right thing as we learn what the right thing is,
23 and we want your input as we are trying to develop
24 the policies that we will implement.

25 SECRETARY TOM VILSACK: Okay. I want

1 to thank the panelists. We're going to reset the
2 panel to invite a number of farmers from this state
3 and from other states to comment in the next panel
4 discussion. It will take us about 15 minutes or so
5 to do that, so we'll be back in about 15 minutes.
6 Again, thanks to all for a very good discussion
7 this morning.

8 (Short recess.)

9 SECRETARY TOM VILSACK: If folks could
10 have a seat, please, we're going to get started.
11 So if you can find a seat. If I could get
12 everybody's attention, please. If folks could find
13 a seat, I'd like to get started. Apologize for the
14 late start.

15 Let me first of all make an
16 announcement in terms of a slight change in the
17 schedule. Given the interest and the size of the
18 crowd, as I understand it, when folks came in, they
19 were given a number or folks who are interested in
20 making a presentation were given a number. We
21 wanted to extend a little bit the comment period
22 for folks in the audience, so following this panel,
23 we're going to have sandwiches available. We're
24 going to encourage you to get your sandwiches
25 within a 20-minute time period and then come back.

1 I will still be here, and there will be several
2 folks from the USDA and Department of Justice up
3 here, and by lottery we'll simply call on people
4 based on the numbers you've got.

5 Hopefully folks will limit their
6 comments to a couple minutes so we can get another
7 40 minutes of interaction with the folks in the
8 audience in addition to what will happen at the end
9 of the day. So that will come after this panel
10 discussion.

11 This morning we're going to -- our
12 second panel is going to be folks who are actually
13 on the ground, so to speak, and in the field,
14 farmers and ranchers who are dealing with the
15 circumstances of agriculture today. I'm just going
16 to briefly introduce all the panel members, and
17 then we'll direct questions to them, so we'll move
18 this along.

19 With us today is Eric Nelson who's a
20 fourth generation farmer and cattle feeder from
21 Iowa. Mr. Nelson has been a certified crop advisor
22 since 1995. He's worked in the seed industry on
23 sales and product management, and since 2004, he's
24 worked as a farmer, cattle feeder, seed salesman,
25 and crop advisor.

1 Pam Johnson also joins us today. She
2 and her family raise corn and soybeans in Floyd,
3 Iowa. They've farmed for -- Do you really want me
4 to say how long you've farmed? For a while. Let
5 me just put it that way. And represents the fifth
6 generation in the farming business, so we're happy
7 to have Pam with us.

8 Ken Fawcett is an independent crop
9 farmer who was raised on his family farm in West
10 Branch. He attended Iowa State University,
11 received a Bachelor of Science in farm operations,
12 returned to his family farm in 1972. He raises
13 corn and soybeans including non-GMO specialty
14 soybeans and white corn.

15 Eddie Wise raises tilapia, sweet
16 potatoes, and hogs in Whitaker, North Carolina. A
17 former Green Beret, he's also taught at Georgetown
18 University and other institutions. He's active in
19 the Black Farmers Agricultural Association and the
20 Twin Rivers Swine Co-op.

21 Todd Wiley is a hog farm from Walker,
22 Iowa. After graduating from Iowa State, he began
23 work for a genetics company. In 1993 he went to
24 work for his father with his father's diversified
25 farming operation. Shortly thereafter he founded

1 Interstate Swine, LLC to handle the hog portion of
2 his father's farm. He's got a farrow-to-finish
3 operation.

4 And Jim Foster is a hog producer from
5 Montgomery City, Missouri. He's farmed for over
6 54 years, raises pure Hampshires and has raised a
7 variety of crops including corn, soy, wheat,
8 barley, and rye, so we have a good cross-section of
9 folks from the Midwest and from the Southeast to
10 discuss a variety of issues.

11 And I'm going to start just in the
12 order that I read the names and start with Eric
13 Nelson. Eric, I think you probably appreciate and
14 understand the risks associated with both sides of
15 this operation as your involvement with the seed
16 business and your involvement on the farm.

17 So I'm interested in knowing from your
18 perspective whether risks are higher or lower as a
19 result of consolidation, or does the market
20 essentially contribute to those risks, or does it
21 mitigate them? So comments about that and the
22 competition issue.

23 ERIC NELSON: Well, the risks are
24 higher due to competition. And I guess is this
25 just a straight question portion or --

1 SECRETARY TOM VILSACK: It's a
2 question and you can amplify on it.

3 ERIC NELSON: Okay. The fewer
4 competitors, particularly in my cattle operation,
5 it's not unusual in a week's time that we're down
6 to 15 and 20 minutes cash market per week compared
7 to a grain producer maybe has 1,500 minutes a week
8 in order to make grain sales, and it's because
9 there are only a handful of end users in the cattle
10 market versus -- especially in this part of the
11 world with the coming of the ethanol industry and
12 all the ethanol plants that there are. There are
13 many more end users for grain, but on the cattle
14 side, it's become very constricted and on the seed
15 side of things as well.

16 Sure, there are still many choices,
17 but many times those choices are much more limited
18 than they once were, and what's bothersome to me is
19 customers will think that they're making choices
20 from different companies when, in fact, they've
21 purchased the same product in a different bag from
22 different companies, but it's identical product.

23 SECRETARY TOM VILSACK: Pam, you also
24 have interest in a seed business, and so you've
25 seen it from both sides. There was discussion

1 earlier today about the increase in input costs not
2 necessarily being associated or connected to prices
3 that midsized operations are receiving.

4 Is that just simply a fact of life, or
5 do you think that there need to be some adjustments
6 to the market?

7 PAM JOHNSON: Well, I have prepared
8 remarks about that but --

9 SECRETARY TOM VILSACK: Feel free. I
10 mean you all just amplify on the question and run
11 with it.

12 PAM JOHNSON: Okay. I'll address that
13 in this, and then if you have further questions,
14 I'd be glad to answer them.

15 As you said, I farm in partnership
16 with my husband and two sons. Our farm looks very
17 different from those of my parents' generation.
18 We've made progress in many areas and improved
19 production. Today we raise three times as much
20 corn on one acre of land as we did back in the
21 1950s.

22 We've taken advantage of tremendous
23 advances in science and technology. These include
24 improvements in genetics with corn breeding, the
25 advent of genetically modified crops, and the rapid

1 adoption of biotechnology. We use precise
2 placements of seeds and fertilizers and follow best
3 management practices.

4 The use of GMO seeds makes economic
5 and agronomic sense and provides efficacy with less
6 trips across the field, less fuel, and a safer
7 environment for us farmers, our families, and the
8 environment.

9 We have adopted biotechnology in
10 soybean and corn production. We're not required to
11 plant biotech seeds but rather have looked at the
12 value that the seed technology provides, and I
13 guess that would be my answer to your question.
14 And we consider the price of that value.

15 Like other farmers, we speak with our
16 checkbooks. If it's overpriced, we do not buy it.
17 We have a choice in the seeds and traits that we
18 plant. I have seen charts showing a very robust
19 pipeline of new traits that will be available to
20 farmers in 2010 and beyond. These traits are not
21 coming from one source but from multiple companies.
22 And it will take significant industry investment in
23 research and intellectual property protections by
24 all companies so farmers like me have innovation,
25 choice, and competition in the marketplace.

1 The world is a very different place
2 than it was for my parents. In today's complex
3 global marketplace, we are all interconnected. If
4 there's a financial meltdown in Dubai or Greece or
5 a trade issue with South Korea or Japan, there are
6 ripple effects that seriously impact my farm and
7 our business in Floyd, Iowa.

8 For example, we experienced this
9 domino effect back in 1998 as pork producers. The
10 U.S. instituted a steel embargo which led the
11 Russians to institute a poultry embargo which
12 caused a glut of poultry on the world market which
13 depressed hog prices to historic lows.

14 Challenging as it is to compete in
15 this global marketplace, I would not choose to live
16 in the past. The challenges are balanced by the
17 opportunities. Life on the farm is better for me
18 and my children. We have access to technologies,
19 tools, and markets our parents could only dream
20 about.

21 The U.S. is a maturing and aging
22 economy with 98 percent of the world's population
23 living outside our borders. There will be an
24 additional 3 billion people by 2050. Agriculture
25 is a core strength of the United States, ensuring

1 food and fuel security for both domestic and
2 international needs. And our farmers want the
3 opportunity to be an answer to those enormous
4 needs.

5 We want to live in a more stable world
6 where people are not fighting over food and oil.
7 Science and governmental policy have a huge role to
8 play in getting us there. The competition issue
9 for me is in giving the American farmer the chance
10 to compete on a level playing field, to supply
11 food, meat, and energy for the world's needs. This
12 means my government is involved in investments in
13 ag research, biofuels policy, setting a more
14 balanced tone in the food and fuel debate, and is
15 increasing trade for all ag products.

16 We need more public and private
17 investments in ag research. I've been privileged
18 to serve as the corn farmer on a team that's
19 providing direction and to advocate for the funding
20 to sequence the corn genome. This has been a strong
21 partnership with the USDA, the National Science
22 Foundation, and private industry. It's important
23 because it opens the genetic potential of corn,
24 puts all that information into the public domain so
25 all researchers have access.

1 Robust support of ag research needs to
2 answer the fundamental scientific questions and get
3 that research out to end users. I'm asking for
4 supportive dollars but maybe, more importantly,
5 support of a philosophy. Farmers are in a daily
6 battle to defend what we do. We live in a culture
7 where public opinion and policy is driven by media
8 frenzy, and the affluent are disconnected from the
9 hand that feeds them.

10 We are all engaged in this battle to
11 tell our story, and we need our leaders, our
12 legislators, and especially our Secretary of
13 Agriculture to do more to set the tone to get to
14 the truth. The tone has been very divisive.
15 Production ag is being discounted. People are
16 talking about food versus fuel, not food and fuel.
17 There is anticorporate sentiment, anti-big
18 sentiment, drawing lines between corporate factory
19 farms and family farms, whatever those definitions
20 mean. I don't know.

21 The media says big is bad. Corn is
22 bad. Meat is bad. Farmers do not want to be
23 pitted against each other. We all have a role to
24 play, and the world needs all of us. Trend lines
25 for corn production on constant numbers of acres

1 continue to climb. Farmers have the ability to
2 produce more than enough grain for our customers.
3 There has been good government support for corn
4 grain to ethanol in the past, but it is waning at a
5 time when there are great needs for biofuels and
6 biobase materials.

7 The issue at hand is the policy of
8 indirect land use under the renewal of fuel
9 standard. Corn to ethanol is not allowed to
10 compete with gasoline on a level playing field and
11 is penalized by rules while gas is given a bye.
12 This means that I as a farmer in Iowa am held
13 accountable for actions in farming practices of a
14 farmer in Brazil.

15 This is based on assumptions and
16 economic modeling that even the economist makers
17 have admitted are measuring the unmeasurable. This
18 is simply not right and fair to the American farmer
19 or the consumer.

20 I would ask that my government adopt
21 laws and rules that are grounded in reality and
22 issue you an invitation to come out to the country
23 and see and talk with us. I believe that the
24 future of ag is very bright, but it will take all
25 of us working together to make it so.

1 Thank you for the opportunity to speak
2 and tell my story, and I'd be happy to answer any
3 questions.

4 SECRETARY TOM VILSACK: Thank you,
5 Pam. What I'm trying to do with this process is to
6 make sure that we have an opportunity for dialogue,
7 so as we do these statements, if you want to
8 respond to a question and then read the statement,
9 that's great, but hopefully we can keep it within
10 an appropriate time frame.

11 Ken, I notice that you are involved in
12 niche markets, and I'm interested in whether or not
13 in the niche market area you see a competitive
14 issue at all and, if so, what the nature of that
15 is.

16 KEN FAWCETT: Thank you, Secretary.
17 I'd like to just briefly explain I'm part of a
18 group that grows specialty crops, and some of those
19 specialty crops are not genetically modified. And
20 I'm also part of a group that became ISO certified.
21 About 30 farmers in 2001 became ISO certified to
22 verify our production practices and how we grow our
23 crops, how we store our crops, and how we maintain
24 the purity of those crops. We did this because of
25 the food scare, and we felt that our organization

1 could provide quality products to the consumer.

2 As a result of this, we had very
3 little interest from the food industry, and in 2004
4 we learned of a soybean that was developed at Iowa
5 State University that had traits that were very
6 specific to the oil content and produced a quality
7 oil, and I guess if I would, I'd like to share with
8 you the history of Asoya and what it did in the
9 last five years and what maybe we learned from it.

10 But this group of farmers thought we
11 would grow seed, low linolenic soybean seed, and
12 that the whole world would want this seed when the
13 food labeling law came. Well, we had the seed in
14 the ground, 10,000 acres, and we looked around, and
15 there was nobody that wanted the seed. There was
16 absolutely no demand for this new seed. So this
17 group of farmers decided, well, we better start a
18 company and process the soybeans into oil.

19 And that's exactly what Asoya did.
20 They raised money within the group, and they took
21 the beans from that production. 90 percent of that
22 10,000 acres went into soybean oil. And we brought
23 that soybean oil to the market, and Asoya
24 accomplished many things there. The soybean oil we
25 brought was a very high quality and purity.

1 Dr. Fehr at Iowa State that developed the soybean
2 said "This is even higher quality than I can
3 maintain in the laboratory."

4 We brought an oil to the market that
5 had no transfats, high stability, lower saturated
6 fat, and a cleaner, lighter taste. After months
7 and months of testing, because these food companies
8 would test the product for months and months and
9 months to see if it met their quality, they found
10 many advantages for it in chips and baby food, in
11 snack crackers and many more. There were high
12 reviews by restaurants that gave it superior
13 performance in fryers, and of course it was
14 transfat free.

15 It was also accepted by the soybean
16 producers that began to grow this soybean. They
17 liked the fact that it was non-GMO, there were no
18 technology fees, and they almost as time went on
19 stood in line to grow the soybeans.

20 Farm Industry News gave it an innovation
21 award in 2008. And we felt that we'd defied the
22 odds, and we'd brought a product to market which
23 everyone said we couldn't do. But in the last few
24 months, Asoya has been dramatically downsized.
25 It's no longer contracting soybeans, and I'd like

1 to share a few things, I think, that created the
2 difficulties.

3 There were wild swings in the
4 marketplace, unprecedented high commodity prices,
5 and it led to a dramatic decline in soybean acres
6 in 2008. Nobody even wanted to plant soybeans when
7 corn was \$6 an acre. We couldn't get acres in.

8 It also needed large amounts of
9 capital, and that resulted in several injections of
10 capital by the original members as well as outside
11 venture capital. The corporate structure of the
12 marketplace and the processors made the access to
13 that market extremely difficult.

14 Then the time lag between the time
15 when they finally decided they wanted the product
16 and we could supply it was as much as 18 months.
17 We had to get growers. We had to plant the crop.
18 We had to process the crop. We had to supply the
19 oil.

20 But most of all what happened to the
21 economy in 2009 led the users to reassess what they
22 could pay for soybean oils. They were interested
23 in the cost and not the value of our product. They
24 could blend lower quality oil such as canola or
25 3 percent linolenic soybeans to achieve their food

1 labeling laws.

2 And we feel the government wrongly
3 allowed companies to label food as trans-fat free
4 when you turn the bag around and it says it
5 contains hydrogenated vegetable oil. And that's a
6 contradiction.

7 They've lowered serving sizes to
8 unrealistic low levels so that they can get through
9 the labeling law and say it has no transfat because
10 the amount is so insignificant, and that's true if
11 you have three chips. Most people don't eat three
12 chips.

13 But millions were spent to bring a new
14 company, a healthy environmentally friendly
15 company, and a cooking oil to the marketplace.
16 Farmers have accepted the benefits of the seed and
17 the procedure and the production for the storage
18 and processing of those beans. There was thousands
19 of hours put into this company plus all the
20 investments.

21 And I guess the lessons learned, if I
22 could just maybe sum those up -- or maybe you want
23 to ask a question because I see my time is up. But
24 the summary, I guess, is it's very, very hard for a
25 small independent company to bring a food

1 ingredient into the market. We thought we maybe
2 had done it, and we failed. The specialty crop
3 market is becoming concentrated just like other
4 parts of the agricultural industry. Many specialty
5 crops might exist, but often one company controls
6 the contracting, the procedures for production, the
7 marketing, and the payment.

8 The food industry is not overly
9 interested in maintaining high-quality products or
10 traceability when our group of ISO producers found
11 practically no interest in food companies
12 contacting us.

13 And I think my time is up, but I
14 appreciate your time to talk about this.

15 SECRETARY TOM VILSACK: Thank you.
16 Eddie, as you talk about your operation, I'd
17 certainly appreciate your views on your experiences
18 in a diversified operation in terms of the
19 challenges that you face in terms of input costs
20 and markets.

21 EDDIE WISE: I am a member -- there's
22 26 of us -- independent raising all natural pork,
23 and it's been a battle to get there, but some of
24 the biggest problems we've encountered, for
25 instance, Whole Foods came in and offered all of us

1 a contract. I'm the only one that didn't survive.
2 I chose not to take the contract because once you
3 take a contract, it's over with. Whenever they
4 decide to shut you down, they shut you down.
5 That's what it's basically all about.

6 So my partners and I have opened up a
7 meat market and only to find out that in order to
8 keep that meat market open, I'm going to have to
9 put a processing facility on my farm because
10 without being able to process it, I can't say I'm
11 raising all natural pork.

12 So I've designed a processing
13 facility, and you run into that same problem again
14 when you need \$200,000 for this facility, and the
15 banks look at you and kind of smile, and you still
16 own that lien. And I encountered the same problem.
17 I did nine years of commercial aquaculture research
18 at the University of Maryland-Eastern Shore. In '97
19 I moved 5,000 tilapia to my farm. When I went to
20 market on tilapia, because I stripped out a hog
21 house and put tanks in it, they refused to let me
22 market my fish. But you got fish rushing in out of
23 China by the tons, and we don't know what they're
24 grown in.

25 I haven't given up. I have got my

1 facility designed, but all of it hinges on where
2 the dollars are going to come from, and when you're
3 already in debt, you don't need to get in more debt
4 in order to operate. So basically what we're
5 looking for is some grant money, some independent
6 money, that will allow us to go to the next phase,
7 but no matter what happens, I'm going to continue
8 to be an independent hog grower. I love it. My
9 father did this. He had one of the largest hog
10 operations in North Carolina as a share cropper
11 when I was five years old.

12 And he left the farm when I was six
13 and told my mother he was not going to work himself
14 to death for someone else. But I couldn't wait to
15 find a farm, so I spent 27 years running around as
16 a Green Beret, and I would raise a few hogs, and every
17 time I'd get about a hundred hogs, they'd send me
18 somewhere. So I had about 200 head of hogs, all
19 purebred Duroc, and they sent me out to Howard
20 University to teach, so I taught at Howard for a
21 year, Georgetown for a year, and all that time all
22 I could think about is I got to get back home to North
23 Carolina and get back to raising hogs.

24 And so I finally got back, and the
25 wife loves it. She was born and raised in

1 Washington, D.C., but she loves the farm. So we're
2 having a good time. But we're not making that much
3 money right now. But it's in the makings. You
4 just have to be tough, and you have to stick it
5 out.

6 SECRETARY TOM VILSACK: Todd, you're a
7 hog farmer, and so you're obviously involved in the
8 marketing of your hogs. As you talk about your
9 operation and give your statement, I'm interested
10 in your views about what you think the proper
11 balance is between a spot market and contracts in
12 fixing prices.

13 TODD WILEY: Thank you, Mr. Secretary.
14 I'll be happy to answer that question, actually,
15 through the course of my presentation.

16 I came back -- as the introduction
17 indicated, I came back to the farm in 1993 to a
18 farm that was very diversified, corn, soybeans, we
19 fed cattle, and had a 160 sow farrow-to-finish
20 operation.

21 Five years later in 1998, anybody who
22 was in here remembers what happened in '98 in the
23 hog business. It wasn't real friendly, similar to
24 what we've been through in the last couple of
25 years. I got in the hog business in 1998 with my

1 father. We're equal partners in Interstate Swine,
2 LLC, farrow-to-finish operation. I'm the managing
3 partner.

4 We've grown the business to
5 1,150 sows, and we market about 26,000 market pigs
6 a year, which by most industry standards is
7 considered a fairly small operation. But I'll
8 explain a little bit as to how we got to that
9 point.

10 The trends in agriculture is one of
11 the things that we were asked to discuss, and as
12 you know that there are less and less pork
13 producers and less and less farmers in the industry
14 as we've gone along. In part that has been
15 required because of the management techniques and
16 the economies of scale that needed to be acquired
17 just in order to compete competitively.

18 And so our operation is probably
19 bigger now than what I would have envisioned
20 15 years ago, but in order to capture the economies
21 of scale, in order to utilize the management
22 techniques and embrace the production standards
23 that were set in our industry, in order for us to
24 compete, we didn't have a whole lot of choice. It
25 was either to grow our business, to capture those

1 economies, or to exit. And so as a managing
2 partner, I chose to grow our business.

3 I firmly believe that independent
4 operators have every opportunity to succeed, but we
5 do need to be able to utilize and capture the
6 economies. We need to utilize the technology and
7 management strategies that the best people in our
8 industry use.

9 There are more -- there are less
10 packers, rather, now that are more efficient in
11 terms of harvesting and processing product, and for
12 those of you who aren't close to the hog business,
13 this is the way we are wired. We are wired least
14 cost.

15 The industry is based upon producing a
16 high quality, safe protein for the world
17 consumption at least cost, and so that is part of
18 the reason agriculture and pork production in
19 particular looks the way that it does at the
20 moment.

21 You talked about the spot market, and
22 currently as low as 5 to 6 percent of the pigs are
23 negotiated spot market. That sets a price formula
24 for about 50 percent of the pigs in production. I
25 am one of those people who's on a formula price

1 with two different packers.

2 I do that for a couple of reasons.

3 The primary reason, though, is because I fear not
4 being able to market my pigs in a timely manner.

5 For example, I have a barn that needs to be empty
6 on Monday. I've got one load of pigs left in that
7 barn. On Tuesday the power washer shows up to
8 wash, disinfect, and clean that barn. On Wednesday
9 and Thursday I reload it. I do not have the
10 benefit of time because if you know anything about
11 biology, biology doesn't wait on anybody.

12 I've got pigs coming from the
13 nurseries. I've got pigs coming from the sow farms
14 that need to move through my production system, and
15 so I've been reluctant to engage in spot price
16 marketing or negotiated sales. I think it's
17 necessary. I'm glad somebody does it. But in my
18 operation at this time, we do not.

19 I think it's also important to know
20 that the packers need accurate price discovery as
21 well. While I'm trying to get as much money from
22 my pigs as I can, I acknowledge and understand the
23 fact that they're trying to buy my pigs for the
24 least amount that they can. And that's part of the
25 capitalism formula that we -- price discovery is

1 important.

2 Intuitively, I believe that 5 to
3 6 percent of those pigs, basically pricing the --
4 another 50 percent, intuitively I struggle with
5 that. Is that enough? But that's all. I can't
6 find an economist that can give me the number. Is
7 it 8 percent? Is it 12 percent? So that's an
8 ongoing challenge philosophically in my mind.

9 We choose to sell our pigs to packers
10 who don't maintain much ownership of pigs. I need
11 to have a relationship long term with somebody who
12 needs me. And so it's got to be a mutual
13 beneficial relationship.

14 We do have marketing arrangements with
15 both of the packers. One is a very rigid written
16 contract, and the other one is a verbal agreement.
17 My bank, my lender, has never required me to have
18 that sort of relationship with packers. However, I
19 am aware and know of lenders who do.

20 Challenges in our industry, especially
21 currently, are huge, profitability being the
22 biggest challenge. We suffered through a worldwide
23 economic downturn, and on the heels of that came
24 the H1N1 flu virus that unfortunately was misnamed
25 the swine flu.

1 You know, the other challenge that we
2 deal with are legislators who have minimal
3 knowledge of modern production systems in
4 agriculture, and so that's a challenge that we need
5 to deal with.

6 And finally, the one that probably has
7 the longest-term effects for our business is a
8 substantially higher input cost that we have to
9 deal with, in part because of an ethanol policy
10 that creates more competition for our primary feed
11 grain in corn, and so we're concerned about what
12 opportunities there are for that.

13 And finally, probably the challenge
14 that we're going to see coming forward is a higher
15 cost in food, simply because our business is going
16 to dictate that we have to receive more money for
17 our product. Consequently, the consumer will have
18 to pay more as well.

19 I see my time is up. I still have
20 more to say if you want to --

21 SECRETARY TOM VILSACK: Another minute
22 there.

23 TODD WILEY: All right. There are no
24 more -- I'm going to finish. When the Secretary
25 of Agriculture tells you you can finish, I believe

1 I will.

2 There is no magic wand to return
3 farming and agriculture and pork production to the
4 way it was 20 years ago. I fear that it's
5 impractical at this point. I think we're too far
6 down the road to structurally change our business
7 to disallow packer ownership. There have been
8 hundreds and probably thousands of pork producers
9 in our state and the upper Midwest who have changed
10 their production capacities to fit into the modern
11 contemporary system. And to disrupt the modern
12 contemporary system from a legislative standpoint
13 will cause significant challenges for a lot of farm
14 families.

15 I guess in closing, if there was one
16 more solution that I would pose and the one that
17 has some long-term challenges for us, while I am
18 not opposed to renewable fuels, I am not opposed to
19 energy independence, I think that at this point in
20 the ethanol industry, it's time to eliminate or at
21 least minimize the import tariff, and I think that
22 it's time that we allow the blenders' tax credit to
23 expire.

24 We're not opposed to competing for
25 corn as long as we can compete for it on a level

1 playing field.

2 SECRETARY TOM VILSACK: Well, let's
3 finish this first round in hearing from Jim. And
4 Jim, you've heard Todd discuss his challenges in
5 the livestock business and his views about formula
6 marketing and spot market. I'd be curious, as you
7 give your statement, your feelings about that.

8 JIM FOSTER: Okay. And I'd like to
9 say, too, I imagine Eric probably has a little more
10 time.

11 SECRETARY TOM VILSACK: Yeah, he does.
12 We'll come back to him.

13 JIM FOSTER: Okay. Thank you. I'm
14 humbled and proud to serve with people that seem so
15 dedicated.

16 I started being excited about this
17 problem eleven years ago and went to two of these
18 things. They fell on deaf ears. I want to tell
19 you, Mr. Secretary, I'm convinced this is not a dog
20 and pony show. You folks mean business and I
21 appreciate it.

22 I won't bore you with history of my
23 55 years nonstop in hogs, but I'll tell you for
24 sure I've seen it about all unfold in front of my
25 eyes. I plan to speak from the heart but shoot

1 from the hip today about the serious trend we're
2 in. My concern is not for me but for my kids and
3 grandkids, making sure they can pursue the American
4 dream as my wife and I have.

5 Believe me, hog production is real
6 close to the poultry model whereby they would have
7 to participate by invitation only. As I drove up
8 yesterday, I remembered back to what I saw
9 traveling the same highway in the '60s as I went to
10 Austin, Minnesota, to a hog show. I saw home-built
11 hog shelters on lots of rolling hills of Missouri
12 and southern Iowa having sows with new litters. I
13 saw barns across Iowa with concrete pads out front
14 with 50 to 100 calves on feed. I saw veterinarians
15 at work with their catch chute, feed trucks
16 delivering feed, implement dealers delivering a new
17 manure spreader or a feed grinder. I saw real
18 economic growth all over north Missouri and
19 southern Iowa.

20 Fast forward to today and what did I
21 see? I saw where weeds grew up through the
22 concrete cracks last winter because there was no
23 cattle on feed. I see silos torn down or having
24 been empty for decades. Remains of those portable
25 hog houses are seen stacked rotting in the corner

1 of the field. Very little human activity around
2 what was once a thriving economic model can be
3 seen.

4 What happened? Perhaps the biggest
5 thing, we were taken back by the Chicago School of
6 Economics where the biggest, toughest boar hog at
7 the trough deserved to be the last one standing, no
8 matter who got rooted out or even killed or
9 economically killed by its tusks. He deserved to
10 win because he would be the most efficient, and
11 that efficiency would be transferred to the
12 consumer. That Chicago school is hogwash.

13 The recent economic global meltdown is
14 the most vivid costly disaster caused by that
15 thinking. Too big to let fail became the buzz
16 word. Will the biggest of our packers and food
17 retailers finally reach that level? We're probably
18 close. If so, our food security is at risk.

19 What is the true real cost of
20 so-called cheap food? I'm glad to read the
21 Illinois Agri-News that a leading proponent of that
22 who's a civil court judge has turned 180 degrees
23 after he saw the economic meltdown. I'm here today
24 to tell you our current price discovery system for
25 finished cattle and hogs is absolutely broken. Not

1 cracked or weakened. It's broke.

2 90 percent of all market-ready hogs
3 are on the packers' doors with very little
4 competitive bidding. They're hogs owned and raised
5 by him, are promised months ahead, unpriced, with
6 the promise the producer will get 5 or \$10 a head
7 over the corn belt average, but that is determined
8 by the other 10 percent. Why would he bid
9 competitively on the 10 percent? He'd rather slow
10 down his kill speed.

11 In reality 90 percent is in possession
12 or he could say he owns 90 percent every day
13 without bidding. Would a city administrator who
14 owns a paving business be allowed to contract his
15 own company to do 90 percent of the city's streets?
16 Heavens no. He'd be history.

17 Let's read Section 202 Part B of the
18 Packers and Stockyards Act. "It shall be unlawful
19 for any packer with any respect to livestock meats,
20 meat products, or livestock products to give any
21 undue or unreasonable preference or advantage to
22 any person or locality in any respect whatsoever or
23 subject any person or locality to unreasonable
24 prejudice or disadvantage in any respect
25 whatsoever."

1 How do packers on a daily basis who
2 purchase 90 percent of their kill from
3 themselves -- from themselves -- not violate? This
4 is unrealistic. Market manipulation by packer-fed
5 cattle was confirmed in '94 when a large packer
6 addressed the Kansas Livestock Association telling
7 them that companies use their own cattle to fill
8 their needs when prices are up and stay out of the
9 market when cattle are down. To me this is
10 antitrust, the whole nine yards.

11 When I was a kid, Sunday evenings my
12 neighbor would have five or six trucks loaded --
13 loading his fat cattle to go to the city. National
14 Stockyards Illinois, he had fifteen commission
15 firms to choose from, six packers in St. Louis
16 alone to bid on them. We truly had competition,
17 and our cities and rural areas thrived. I can't say
18 we can go back and open those stockyards. I don't
19 mean that. But I think perhaps an electronic
20 marketing system or something could be arranged.

21 Back then packers agreed not to own
22 cattle or hogs more than 14 days. I'm sorry. I'm
23 up? Do I have to quit or can I continue?

24 SECRETARY TOM VILSACK: Give you a
25 couple more minutes.

1 JIM FOSTER: So we didn't have captive
2 supply hanging over our head. Then in '79 they
3 kind of dropped that agreement. Packers built
4 massive pork houses and feedlots, and farmers
5 exited hogs in the '80s by the masses, and it's
6 still going on.

7 Since 1980, we've lost 91 percent of
8 our hog operations, 41 percent of all cattle
9 operations, 80 percent of our dairy. Since '96, we
10 lost 30,000 of our feedlots under a thousand head.
11 Those are family farm feedlots. We are a net
12 importer of beef.

13 Instead of identifying the real
14 causes, we're advised to kill a pig, sell it at the
15 farmer's market off the back of your pickup.
16 Promote agritourism. Let the city people help you
17 feed the pigs and milk the cow. Offer bed and
18 breakfast. These are all noble ideas and I have
19 super friends. This will not pay for a farm and
20 buy health insurance.

21 Pay more check-off dollars so we can
22 promote more exports. We've had exports of pork
23 through the roof for the last two years and hogs in
24 the 30s and 40s. There's some interesting things
25 on exports and imports. I'll show you those.

1 Cattle prices reached an all-time high
2 in '03 when nearly all of our export stock --
3 here's the chart. USDA. The red line is exports.
4 You see they dropped, almost zero. The purple line
5 is prices. Prices went through the roof when
6 exports were almost zero. Why? Because imports
7 also stopped. We stopped the Canadian cattle.
8 Folks, that's a pretty big item.

9 Here's the other one. That's from
10 competitive destruction. The packer had that
11 competitive advantage when he could get those
12 cattle out of Canada. You can see that from the
13 graph. When he lost that ability, we once again
14 had price discovery.

15 Here's the other one. U.S. beef
16 cattle and trade with our 17 FDA countries that we
17 have a free trade agreement with. The red marks
18 mean we have a deficit with them. You see anything
19 that doesn't have a red mark? The total over
20 20 years, cumulative is \$37.6 billion. The brown
21 line is imports to this country. The blue one is
22 exports. We're losing. We have got to have a
23 place at the table to get beef on the front burner
24 for these things.

25 Ron Plain, economist, University of

1 Missouri studied trends for years, and he said we
2 may have to return to the previous model of pork
3 production whereby hogs are raised on the farm,
4 where the corn was raised and attended by the
5 family on that farm. That's a super idea. I'm not
6 interested in going to 1,100 sows. My kids -- Ron
7 Plain also said you got to be big. You got to be
8 good. And you must have deep pockets. I think
9 Glen Grimes told me that.

10 My grandkids can have one of those.
11 They can be good. They can't be big. They've got
12 to start somewhere. They have to have market
13 access. This is America, folks. They have to have
14 market access.

15 If Ron Plain's idea of the previous
16 model of pork production is a reality, we've got to
17 have price discovery, folks. There's no way my
18 grandkids can fill all three. They can be good.
19 We should not ask them to wait until they're 21,
20 borrow a million dollars, put up barns for Cargill
21 or Tyson to be in this industry. Again, this is
22 America.

23 In closing, I know our stockyards
24 won't reopen. Everyone need not have chickens,
25 pigs, and a milk cow, but it's time we reinvented

1 competitive markets whereby my grandsons and
2 granddaughters can sell their products.

3 And I want to say a great big thank
4 you to our Secretary and our Justice Department.
5 Thanks for standing firm, Mr. Secretary, on COOL.
6 With Canada's 18th case of mad cow day before
7 yesterday, this is important. We appreciate it.
8 We appreciate the progress made on Packers and
9 Stockyards.

10 This is a new book. We appreciate
11 that and I know it's not done. There's language in
12 here that helps us. We've got to have it. Time is
13 running out.

14 Again, I applaud your efforts. Thank
15 you for this opportunity. And I have my speech
16 right here for press so they don't get anything
17 messed up.

18 Even more so, there's a yellow piece
19 of paper I really wish somebody would take the time
20 to read to this whole crowd. Is that too lengthy?
21 It's a poem. Let's get Eric first.

22 SECRETARY TOM VILSACK: Let's give
23 Eric a chance.

24 ERIC NELSON: Thank you,
25 Mr. Secretary. I responded earlier to what I

1 thought was just a specific question, but I had
2 prepared a more complete statement.

3 You know, in sitting here and
4 listening to the comments, it really strikes me
5 how, you know, one of the main reasons that I
6 wanted to be here today is the next generation, and
7 I want to thank my oldest son and my third oldest
8 son for being home today out in some mud, not very
9 pleasant conditions, working so that I'm able to be
10 here today.

11 But I believe bringing young people
12 into the production of agriculture is the most
13 important thing there is to the future of our food
14 supply and that bringing young people back is as
15 simple as ensuring them a fair fighting chance at a
16 profit.

17 I believe our government has an
18 obligation written in law not to pick winners and
19 losers but to act as a referee and ensure the laws
20 and regulations dealing with anticompetitive
21 practices are enforced. Henry Thoreau once wrote
22 "The corporation has no conscience and thus is
23 singularly driven for profit." That has become a
24 problem for numerous industries but specifically
25 for the seed and the cattle industry.

1 Hybrid seed corn provides a vehicle
2 for increase like no other crop and has been key to
3 the U.S. becoming the breadbasket of the world.
4 But the U.S. seed industry, I believe, has been
5 taken advantage of. I've seen technology fees to
6 seed partners raised mid-contract in violation of
7 the very contracts that the parties had. I've seen
8 companies signing nonexclusive marketing agreements
9 with one company only to have another company
10 discontinue in retaliation another marketing
11 agreement.

12 I've seen misuse of confidential
13 biotech seed stewardship agreements. I've seen
14 pricing schemes using free seed that generally
15 benefit the very large farmer at the expense of the
16 small farmer. I've seen a reduction in
17 conventional corn research in favor of biotech
18 research. Not that biotech research has been bad,
19 but the dollars spent on conventional research has
20 gone through the floor, and that's put future
21 risks -- future yields at risk for all farmers.

22 I recently compared corn yield on the
23 same farm that I farmed for 25 years and compared
24 the years 1987 and this last year, 2009. Bushel
25 yield increased 25 percent, which is good. But the

1 price of the seed and the chemical and the chemical
2 weed control together had increased 153 percent in
3 that same time.

4 I think we all agree that output is
5 greater, but a large part of that is price. And if
6 prices were half of what they are, I think there
7 would be a lot more grumbling about the price of
8 seed today.

9 I've also seen seed technology being
10 sold with little or no consideration for the
11 ill-effects caused by the products. I have copies
12 of studies by Dr. Huber from Purdue and one by
13 Kramer & Means that was published in the European
14 Journal of Agronomy that show increased fusarium
15 and mycotoxins caused by increased Roundup use.
16 I've seen the effectiveness of new technology be
17 overstated at the expense of the farmer. Monsanto's
18 Genuity Roundup Ready 2 Yield Soybeans are an
19 example.

20 And then finally, due to budget
21 constraints, land-grant institutions are no longer
22 able to conduct the introspective research on seed
23 that they once did. And the research they
24 currently do is funded primarily by the seed
25 companies themselves. Some will say that's

1 efficient, but I believe that the research that's
2 purchased by the seed companies tends to be rather
3 self-serving.

4 So how do we fix the industry? I say
5 we disallow any monopolies and the anticompetitive
6 activities that come with them. Somehow require
7 that all germplasm be made available to the public
8 through land-grants or other public entities.

9 In the beginning -- you know, these
10 inbreds, B73, Missouri 17, Ohio 43 were all
11 generated publicly. And somehow, you know, my alma
12 mater let -- Dr. Hallauer let some of those inbreds
13 go without getting a license fee because he wanted
14 them to stay in the public realm, and in the public
15 realm, I believe they should stay to spur
16 competition.

17 I say that we should enforce the
18 Robinson-Patman Act of 1936 which prevents
19 predatory pricing of like products. I've seen
20 across a section the difference in the price of
21 seed can make as much as -- in the same bag of seed
22 can make a \$70 an acre difference in advantage to
23 the large grower versus the small grower. If that
24 large grower is farming 12,000 acres, that's a
25 million dollars more to the bottom line that he can

1 buy a new farm with every year. And so there's no
2 surprise that the larger continue to get large with
3 advantages such as that.

4 I'd like to require technology to be
5 proven safe and effective which could be
6 accomplished by properly funding experiment
7 stations in the land-grant university system, and
8 also, I think we have to re-examine the safety and
9 wisdom of granting long-term patents on living
10 things.

11 I also believe the statement the
12 corporation has no conscience is very relevant to
13 the U.S. cattle industry. It's been stated earlier
14 that four beef packers currently have 80 percent of
15 the slaughter capacity. Captive supply agreements
16 reduce competition, and we need transparency.
17 Also, the geographic center of cattle feeding and
18 meat packing is illogically located far away from
19 the feed resources that we have right here.

20 Unlike grain, cattle are perishable
21 and can't be stored until markets rebound. Due to
22 that fact, domestic prices are very susceptible to
23 changes in foreign demand.

24 And finally, retail margins are
25 excessive. When I sell a beef animal, it's worth

1 around \$1,200 at market. After having invested
2 time and feed for 18 months, within three or four
3 days the wholesale, packing, and retail segments of
4 the industry parlay that 1,200 into 2,400 or more
5 dollars. I don't believe that would happen in a
6 truly competitive environment.

7 So how do we help the cattle industry?
8 Break up the beef packing monopoly. The Packers
9 and Stockyards has the auspices to do that, I
10 believe. Require foreign contracts to be
11 transparent. And there's been a lot of talk about
12 transparency, but I mean really transparent. From
13 the day that a forward contract is entered into
14 that it's made public, not the day the cattle are
15 harvested, because the users of the forward
16 contracts will fill holes for months at a time
17 which end up meaning that there may not be a cash
18 market for weeks or months at a time.

19 We need to revisit free trade
20 agreements to slow imports in times of weak foreign
21 demand, enforce country of origin labeling the way
22 it was written, and spur retail competition and
23 thus beef demand.

24 Now in closing, I want to quote one of
25 the famous speeches that's ever been given in this

1 country. President Lincoln at Gettysburg referred
2 to government of the people, by the people, and for
3 the people. He didn't refer to government of the
4 corporation, by the corporation, and for the
5 corporation.

6 I've asked myself, would all of those
7 who have died before Gettysburg and since
8 preserving this republic want only a handful of
9 companies completely controlling our country, its
10 economy, and its food supply? I don't believe they
11 would, and I further believe laws exist to prevent
12 that thing from happening so long as they're
13 enforced. Thank you.

14 SECRETARY TOM VILSACK: Let me to all
15 the panel members ask somewhat the same question I
16 asked of the first panel, which is if you had to
17 focus on one aspect of this, whether it's the
18 pricing, marketing, the input costs, enforcement,
19 what one suggestion would you make to improve the
20 circumstances and situations for farm families in
21 the country? What's the one thing you would want
22 us to focus on first? Start --

23 JIM FOSTER: Start here?

24 SECRETARY TOM VILSACK: Yeah.

25 JIM FOSTER: I think we've got to get

1 this captive ownership of packers to where they
2 dwindle down, and I realize this is a problem with
3 a lot of family farmers or contract growers. You
4 can't just bring the hammer down tomorrow.

5 This thing of having 90 percent of
6 their needs covered with very little bidding is
7 destroying our market for eternity. To me that's
8 No. 1.

9 SECRETARY TOM VILSACK: Just keep
10 going down the line.

11 TODD WILEY: Yeah. I'm sorry. I'm
12 still thinking. The question was posed to me by
13 the DOJ when they first made contact with me about
14 the concerns I would have in my operation and what
15 solutions could be provided. And I think that, you
16 know, that lends itself to your question.

17 The biggest thing that could happen as
18 far as I'm concerned -- I've told you before that
19 the pork industry is wired least cost. The biggest
20 thing that could happen for me in my business is to
21 expand and grow our exports.

22 EDDIE WISE: I think one of the
23 biggest things that would help right now this
24 country is with the small independent farmers'
25 niche marketing. This is the thing that can take

1 them the top, and without niche marketing, it doesn't
2 matter what you're producing. Nobody is going to
3 buy it.

4 KEN FAWCETT: Yeah. I agree, and I
5 would expand on that. I think what farmers need is
6 opportunity. They need the opportunity to make
7 choices of what they're going to grow and how
8 they're going to grow it in the best way possible,
9 and that's going to -- needs to be free of the
10 corporations that control so much of the industry.

11 And the other side of that is the
12 consumer needs the opportunity to buy what they
13 want to without the corporations putting up what
14 they want to sell to them, which I think is what we
15 have today. Corporations decide what people want
16 too much.

17 PAM JOHNSON: I think I'll go back to
18 my statement about philosophy, and I've enjoyed
19 listening to everybody speak on the panel. We all
20 come from a different place. We all farm
21 differently, and once again, I think that there's
22 room for all of us.

23 I started out very small too with ten
24 sows, and my parents, my dad had to go to work in
25 town to support our family. So we've all come from

1 different places, and we've ended up in different
2 places, and we have different philosophies.

3 But I really would ask that not only
4 of the -- what the government can do for me because
5 that was a question that was asked but that
6 agriculture needs to start pulling together and
7 quit being so divisive about "Only the way I do
8 things is right." There's room for many, many
9 kinds of agriculture.

10 I see that in my community. I have
11 small truck farmers working to supply local
12 groceries. I see people that have a small number
13 of pigs. I see a lot of farmers like Todd. And
14 instead of fighting each other, I think we need
15 each other because one of our segment cannot fill
16 what the growing population needs.

17 ERIC NELSON: Obviously the seed
18 industry is a keen interest of mine having spent so
19 many years, and the seed purchase, there's nothing
20 more important each year, obviously, for the income
21 side of a crop farmer, and obviously it's important
22 on the expense side as well, but I think there has
23 to be a vehicle in which the worthiness of these
24 new products are proven before they can be sold
25 because I've seen it time and time again where new

1 products are rushed to the market as quickly as
2 television ads can be put on television promoting
3 how good they are, but with the science behind them
4 is transparent as far as whether they actually have
5 benefits to the people that are buying them.

6 And I think that that's critical
7 because there's an assumption that's being made by
8 many farmers that, well, you know, they're told
9 that they're really good, but I think that they are
10 assuming that there's somebody that's checking up
11 on the worthiness of these products, and I think
12 the land-grant universities at one time carried out
13 that mission, but because of funding constraints, I
14 don't really see them being able to do that
15 anymore.

16 SECRETARY TOM VILSACK: As I look at
17 the statistics in rural America, I must confess I
18 have some very deep concerns about the future of
19 this country because of the future of rural
20 America. When I see that 900,000 of America's
21 farmers, now about 2.2 million in number, have
22 themselves to work 200 days off the farm,
23 essentially a full-time job off the farm, to be
24 able to keep the farm and I see a net loss of
25 40,000 operations in the last five years in the

1 mid- to larger size activities and farming
2 operations and I see the substantial decrease in the
3 number of farms totally in this country, I just
4 have some genuine concerns about whether or not
5 we've got the right mix in terms of providing
6 opportunities.

7 So the question I have for the panel
8 is this: If we take the steps that you've just
9 outlined, are we going to be able -- five years
10 from now, ten years from now, a generation from
11 now, are we going to be talking about fewer and
12 fewer farmers, or are we going to be talking about
13 reversing a trend that's been in place for a number
14 of decades now?

15 Can we actually provide real
16 opportunity for young people to get into this
17 business? Because you've got an aging nature of
18 farmers. Farmers have aged on average two years in
19 the last five years, now 57 years of age, average
20 age of farmers. 30 percent increase in the number
21 of farmers over the age of 75; 20 percent decrease
22 in the number of farmers under the age of 25.

23 And part of what I want to hear and
24 what I want to learn is, what are we going to be
25 able to do differently, or what do we have to do

1 more of to be able to reverse these trends?

2 Because I think this country has got to get very
3 serious about the future of rural communities
4 because we're losing population, and that
5 population is aging.

6 And so that you understand what I'm
7 talking about, one-sixth of America's population
8 now lives in rural communities, but 45 percent of
9 the people who serve us in uniform in the military
10 come from our rural communities. It is the core of
11 this country. And if it continues to shrink and
12 continues to age and it continues to be less
13 opportunity, then I think our country will be far
14 worse off for it.

15 So I'm interested in hearing from this
16 panel, what specifically do we need to do to
17 increase the number of farmer families? You know,
18 you can talk about all of the usual responses, and
19 I've heard some of them here today. But we're doing
20 a lot of what you all have asked us to do. We're,
21 you know, expanding exports. Exports have doubled
22 in the last ten years. Doubled.

23 We continue to -- we're the third
24 largest year in history of exports in agriculture
25 this year is projected. Two years ago it was the

1 highest level of exports, so we are doing a lot of
2 that. What else do we need to do in order to make
3 sure that there is, in fact, a future for young
4 people in this business? Start with you.

5 ERIC NELSON: Well, again, I'm tickled
6 to have a chance to respond because I think this is
7 what this is all about. I look at the USDA
8 payments and the caps. I don't see any
9 justification for payments to the largest
10 operators. In fact, I'm aware of numerous ones
11 that they have so many different farm setups and
12 entities that they've certainly invented the rules
13 as they're written and are capturing huge, huge
14 amounts of subsidies. That is one way to bring
15 some young folks back.

16 Being an operator of what I would like
17 to call a more holistic livestock operation where I
18 buy very little commercial fertilizer, and my
19 livestock operation really is my fertilizer
20 manufacturing plant, that's a good way to do things,
21 I believe, and it was the way that it was done years
22 ago everywhere, and if there are any ways to
23 promote that and have, you know, more local
24 agriculture and more holistic ag to better utilize
25 the manure resources that we have in livestock.

1 SECRETARY TOM VILSACK: Pam?

2 PAM JOHNSON: This is a great
3 question. I think all of us could talk for an hour
4 about it. I think for one thing, our kids have to
5 have great educations from land-grant universities.
6 I have two sons. One came back full-time to the
7 farm. That didn't just happen. You have to add so
8 much income to your business to bring them back,
9 and we expanded in a lot of areas, a seed business
10 for him to operate. Just look for every single
11 opportunity that's out there. He does some
12 trucking.

13 Second son is teaching school, ag ed,
14 and works the farm on the weekends. I come from a
15 great community. We've had a lot of people in our
16 county, in Floyd County, that have worked on rural
17 ag development for a long time. I was lucky to be
18 in on one of those panels.

19 We've looked at a lot of things, and I
20 think as we look into the future, you didn't let me
21 tell how old I am, but I'm the same age that you
22 are and --

23 ATTORNEY GENERAL MILLER: We're pretty
24 young then.

25 SECRETARY TOM VILSACK: You look pretty

1 good for 29.

2 PAM JOHNSON: I think there's one
3 thing we have to realize, that agriculture is not
4 going to look like it did back when I was a kid and
5 you were a kid, but that being said, there are
6 opportunities out there.

7 In my community we've seen a lot of
8 young people come back. My kids went to Iowa
9 State. We've seen their colleagues come back, and
10 maybe they can't do production agriculture
11 full-time, but there are jobs in ethanol plants.
12 There are grain buyers.

13 So maybe we can't create a place where
14 everybody can be in production agriculture or what
15 it used to be, but there is potential for a lot of
16 jobs in the rural community, whether it's in
17 biofuels, biorenewables, just a whole bunch of
18 auxiliary businesses that can happen. It doesn't
19 just happen. It depends on the leadership that you
20 have in your county. And I've been lucky.

21 KEN FAWCETT: I think of a friend that
22 visited the farm years ago and commented to us that
23 "Boy, a farmer has to do everything. He has to be
24 an accountant, a mechanic, an electrician, a
25 bookkeeper," you know, just on and on and on, and I

1 guess add to that now maybe a marketer, and that's
2 asking farmers to do a lot, and I think it's almost
3 asking them too much.

4 But I agree with some of the things
5 mentioned. I do think it's time to tie, you know,
6 payments to farmers more to their conservation
7 practices, to the way they produce crops more than
8 just the volume of crops that are produced. I know
9 that's not popular, but I think that trend needs to
10 continue.

11 And I think we do need to look at
12 specialty crops. There's no reason Iowa should be
13 just growing corn and soybeans or a particular kind
14 of corn and soybeans. I think the potential to grow
15 a variety of different kinds of crops in the future
16 is going to be much greater.

17 I think we need to look at who is
18 going to be offering those, and how are they going
19 to offer them, and does it present opportunity to
20 the farmer, or are they offered to the farmer just
21 as we'll pay X dollars per acre if you grow this
22 crop for us? I think the farmer needs to take
23 ownership in those new kinds of crops in order to
24 help the health of agriculture.

25 EDDIE WISE: Mr. Secretary, I think

1 the solution lies in our 4-H program, extended 4-H
2 program, from the standpoint that kid that takes
3 the animal and raises it and competes and he sells
4 it, but the problem with that is how does that
5 child take it to the next level, and he looks at
6 his parents, and we are doing nonfarm income, and
7 so what's nonfarm income? It's that income that
8 your father has to make in order to stay on the
9 farm.

10 So my kids went out and got jobs and
11 are working. My grandkids break their neck to get
12 to the farm. They want to learn how to raise the
13 hogs and all the things that I'm doing. So I have
14 a generation of kids that's coming on that's going
15 to take it up and run it, but most kids once they
16 leave the
17 farm and start making money, they say, "Well,
18 what's the use of going back? Pop is still
19 struggling, and I'm having to loan him money."

20 So we need to extend those programs to
21 where those kids can come out of high school, and
22 if he wants to go into farming, he can go into
23 farming. If he wants to go into college, he can go
24 to college. All of our kids are not college
25 material, but they are farming. They have the

1 potential to be outstanding farmers if afforded the
2 opportunity. If that kid knows he can make some
3 money, he'll work.

4 SECRETARY TOM VILSACK: Todd.

5 TODD WILEY: I've got a number of
6 answers, I guess, to that question. I had a
7 brother that was involved in our farming operation
8 up until '98, and this was actually early in '98
9 before the thing really hit the fan, and he chose
10 to leave our operation, and it had nothing to do
11 with economics or finances, and so I think we got
12 to be a little careful equating the decrease in the
13 number of farmers in our country being all finance
14 driven. There are other reasons people have left
15 the farm.

16 There is one thing that I think that
17 could happen in terms of a revenue assurance
18 program. We have a product available to us called
19 a Livestock Gross Margin product, and I've never
20 engaged in it, but I'm told that it's cost
21 prohibitive, and so it might be worth investigating
22 that product where if there was some sort of
23 revenue assurance available to us that was
24 affordable and practical to use, we might be able
25 to engage in it and manage our margins some better.

1 Mr. Secretary, I want to thank you for
2 the exports that we have and the work that you have
3 done in light of your comment here just a few
4 minutes ago. And I guess to answer your question,
5 how do we get more people involved in production in
6 agriculture, people will go where the money is, and
7 if the margins are higher, we'll get more people
8 involved in the businesses.

9 And so in order for margins to be
10 higher, costs have to be lower or revenue has to
11 improve, and revenue doesn't improve until we have
12 an increase in domestic consumption or we improve
13 and increase our exports.

14 China is an enormous opportunity for
15 us in the pork business, and I think as time goes
16 on that as their economy continues to improve --
17 and one of the solutions that actually I identified
18 in my presentation was is as their economy
19 continues to improve and their middle class becomes
20 bigger and wealthier, we have enormous
21 opportunities in the livestock business in this
22 country to export there. Thank you.

23 JIM FOSTER: I have several ideas. I
24 think we've got to work on entry to the business.
25 That's the big item. I totally agree 100 percent

1 with Eric that we need some logical limits on farm
2 payments. I think it should be per acres, and I
3 know a bunch of people will beat me up on this.
4 I'm not interested in my tax dollars paying for
5 somebody to farm 10,000 acres and eat me. There
6 should be a limit somewhere that you farm so many
7 acres. After that, buddy, you're on your own.

8 If that were the case, there would be
9 more medium to even big-size tractors with kids on
10 them farming.

11 Another thing, these government
12 guaranteed loans, and I hope to heavens they've
13 quit. A USDA government guaranteed loan, if you
14 don't have any equity, you can get out there and
15 plant a million dollar building on ten acres. If
16 you've got a good enough contract, the government
17 will back that loan through the bank. Now, who
18 would give you a good contract? Cargill, Tyson.
19 This just eats us, my grandkids getting started,
20 because the government guaranteed loan, would they
21 get a government guaranteed loan to build ten
22 piddly hog houses? No. That's got to stop.

23 This EQIP money has to be brought back
24 down. I'm not interested in helping clean up
25 somebody's mega-mess. I'm interested in my kids

1 maybe having a chance. We've got to scale this
2 whole thing down to where it benefits beginners
3 instead of eating beginners' lunch, which it's
4 doing right now.

5 One thing I want to add. Christine
6 Varney, I want to thank you personally for the
7 efforts you made on the JBS. Our adjoining county,
8 Audrain County, Missouri, now has three fat cattle
9 buyers because you stopped JBS from buying National
10 Beef. Three ain't enough. We'd have had two. And
11 I appreciate it from my heart.

12 SECRETARY TOM VILSACK: I'm going to
13 let Christine and General Miller, if he's
14 interested in making any concluding comments, and
15 then we will wrap it up for lunch, and then we'll take
16 20 minutes and come back and listen to more
17 farming activity.

18 ASSISTANT ATTORNEY GENERAL CHRISTINE
19 VARNEY: Thank you very much, Secretary, and thank
20 you for your kind words for the work that all the
21 Division does.

22 One of the things that occurs to me,
23 Secretary, listening to this panel is that, you know,
24 we've got a lot of our people here, and you guys
25 have such long history and expertise in the Packers

1 and Stockyard Act and we have such strong
2 enforcement on the antitrust side, I'm thinking
3 maybe we need a little joint task force so that
4 maybe I detail some lawyers over to you guys if
5 you'll take them, and we'll really go through on
6 the Packers and Stockyard Act and think about what
7 we might do --

8 SECRETARY TOM VILSACK: Let's see.
9 Dudley Butler, you want to stand up? There's our
10 Packer and Stockyard guy. Dudley, would you take
11 more lawyers over, helping you out?

12 DUDLEY BUTLER: Absolutely, take all
13 you want to send.

14 ASSISTANT ATTORNEY GENERAL CHRISTINE
15 VARNEY: Alright, that clearly is one of the things
16 that comes out listening to this group right here.
17 Way out of my bailiwick, but I said to Tom Miller I
18 think we've got to figure out how to get Eddie's
19 200,000. That's on my list. So I don't know what
20 I can do.

21 SECRETARY TOM VILSACK: I'll talk to
22 Eddie afterwards.

23 ASSISTANT ATTORNEY GENERAL CHRISTINE
24 VARNEY: Okay. This has been very informative for
25 me. I'm going to continue to be here at the lunch

1 and through the afternoon. My staff is here too.
2 Looking for the places where what I can do
3 intersects with what the USDA can do is a new area
4 for us, and I would like any of you to feel free to
5 come up and talk to me about where you see as
6 opportunities that we may be able to effectively
7 address some of these problems, and thanks for
8 having me. Iowa is really a great place. I've
9 been delighted to be here.

10 ATTORNEY GENERAL MILLER: Just
11 following up on Chris's in a way, Mr. Secretary, if
12 we could get a group of state attorney generals or
13 assistant attorney generals who know a lot more of
14 the substance than we do, frankly, that are working
15 in the ag area, antitrust, and consumers to work with
16 Packers and Stockyards to brainstorm, to work
17 together, to think about ideas, to try and get the
18 results that people want here today.

19 SECRETARY TOM VILSACK: Great. Let me
20 just take just two more minutes to talk about what
21 USDA is doing because as I listen to the comments
22 today, it occurs to me that we need to do an even
23 better job of getting the word out about what we are
24 trying to do to try to rebuild this rural economy.

25 The President has been very clear to

1 me that he is very concerned about the status of
2 the rural economy and wants a new framework. So
3 some of the things that we've done recently is to
4 take a look at ways in which we can help farmers
5 get access to additional information.

6 We've talked and heard a lot about the
7 need for transparency, and we have more work to do
8 in that area, but the expansion of broadband access
9 and resources to rural and remote areas is one of
10 the priorities for this USDA.

11 We're in the process now of awarding
12 well over \$2 1/2 million of grants and loans to
13 expand broadband access so the farmers and ranchers
14 have access to real-time information. It will also
15 help small businesses in rural communities
16 potentially expand their markets from local to
17 global.

18 We are also very aggressively
19 promoting renewable energy and biofuel efforts.
20 The RFS2 that recently was announced basically
21 gives us a very specific green light to go ahead
22 with both corn-based ethanol as well as other feed
23 stocks. We're going to make this a national effort
24 to increase our fuel efforts.

25 If we reach the 36 billion gallon

1 threshold set by Congress, there will over the next
2 decade or so be \$95 billion invested in new
3 facilities. It will generate, either directly or
4 indirectly, 807,000 new jobs, so this is a very
5 important part of what we are trying to do, and we
6 are in the process of accelerating implementation
7 of farm bill regulations that will provide
8 resources under the BCAP program for farmers and
9 folks who are providing alternative feedstocks,
10 providing additional resources for the construction
11 of biorefineries as well as retrofitting existing
12 biorefineries to become efficient, so there's a
13 major effort in this regard.

14 We continue to advocate to the EPA for
15 an increase in the blend rate, which I believe
16 eventually they will come to the conclusion there
17 are indeed a number of engines capable of taking
18 E15, and then we'll set up a distribution system,
19 so that's a second strategy.

20 The third strategy has to do with
21 local production and local consumption, and to
22 Eric's concerns and Eddie's concerns, rather,
23 about the opportunity to have a processing facility
24 on your farm, there are resources available, and
25 we'll talk afterwards, to try to create a greater

1 link between local production and local consumption
2 so that we can provide more opportunities,
3 additional market opportunities. Schools, hospitals,
4 prisons, colleges that are located in rural
5 communities have to purchase their food from
6 someplace. We'd like to be able to at least give
7 them the opportunity to do more local purchasing in
8 the region.

9 So there's an aggressive effort under
10 Know Your Farmer, Know Your Food effort to reconnect
11 people with their food source, so there is a greater
12 appreciation for what farmers and ranchers do in
13 this country.

14 I think there's a lack of understanding
15 and appreciation not only as far as food but also
16 water resources as well as fuel and the job
17 opportunities it creates.

18 We're working very hard on conservation
19 and forest restoration to create new opportunities
20 from that and to expand significantly the tourism
21 opportunities associated with hunting and fishing as
22 a strategy.

23 And finally, we're looking at
24 ecosystem markets, whether it's water or carbon or
25 habitat protections, to funnel additional resources

1 to encourage land owners to use their land as
2 efficiently and as effectively as possible to
3 generate as much income. The whole point of this
4 is to try to diversify income opportunities.

5 And part of what we're doing here is
6 to try to determine whether or not there are
7 additional steps that we need to take in more
8 traditional processes to make sure that there is a
9 level playing field for farmers and ranchers.

10 And finally, we have a major export
11 initiative that is focused on really distinguishing
12 between markets. Not all markets are the same.
13 There's been reference to China, which is certainly
14 a potential market, but there are other markets
15 that maybe in the short term have even greater
16 potential for us if we establish relationships and
17 break down barriers that exist.

18 And we're also focusing, obviously, on
19 biotechnology strategy because candidly, the
20 country has not done as good a job promoting
21 biotechnology opportunities as perhaps it should,
22 and that's all part of the President's national
23 export initiative.

24 So on all these fronts, there is
25 activity working at USDA and because we are very

1 concerned -- and I'll end where I started -- very
2 concerned about the future of rural America and
3 very concerned about the value system that is so
4 centered in rural America.

5 With that we're going to take 20
6 minutes to get your sandwiches, come on back. We'll
7 listen to farmers for a little bit, and then we'll
8 have our next panel.

9 (Short recess.)

10 PHIL WEISER: My name is Phil Weiser.
11 I would start by underscoring this is a process,
12 and we are looking forward not only to the comments
13 today but more importantly the ongoing dialogue
14 that this kicks off in our ensuing workshops, the
15 comment period which continues to be open for
16 those -- we have 15,000, but we are hoping we will
17 get additional and continuing comments that are now
18 available on our website.

19 For those who go to the relevant
20 website, all 15,000 comments are available, so you
21 can also comment on other people's comments.

22 With me here is John Ferrell from the
23 USDA, and together we're going to moderate the
24 public session, inviting people up for two-minute
25 statements, and we will have it at this point and

1 then again at the end of the day. John.

2 JOHN FERRELL: So we'll go ahead and
3 get started now, and I'll start -- I'll read off
4 ten numbers, and can you hear me?

5 UNIDENTIFIED MALE: Can't hear you.

6 JOHN FERRELL: Okay. Well, I'm going
7 to read off ten numbers, and so what you'll want to
8 do is line up, as Phil said, and you'll just have
9 two minutes, and we're going to work through as
10 many people as we can because we want to hear from
11 as many as we can from everybody that's attending
12 today, so I'm going to go ahead and start doing
13 that.

14 We have 383, 522, 390, 396, 485, 391,
15 386.

16 PHIL WEISER: So I'm going to read
17 these again, and if none of these individuals are
18 here at this point in time, we'll give them a
19 chance at the end of the day. We know some people
20 may have had to go or in some cases felt like their
21 comments were said. Let's try again. 383.

22 JOHN FERRELL: 383, 390, 396, 485,
23 386, 522, 391.

24 PHIL WEISER: And I think we have one
25 of that group. What's your number, sir?

1 UNIDENTIFIED MALE: Yeah. 396.

2 PHIL WEISER: 396. We've got you, and
3 we have six compatriots who are not here. Let's
4 take another six and see if we can maybe find
5 another person who's intent on speaking with us.

6 JOHN FERRELL: 385, 409, 392, 465,
7 411, 441.

8 PHIL WEISER: I'll read those again.
9 385, 409, 392, 465, 411, 441. All right. So we
10 are now one for twelve in our list. Let's go for
11 another six, and then we'll have a chance to
12 confirm that these others are here.

13 What I'll say is we'll have to ask --
14 we'll read these other -- I guess they will be 16.
15 If people will have to confirm that they're
16 actually going to want to speak, you know, in the
17 other slots, so we'll see. All right. Six more.

18 JOHN FERRELL: Okay. 406, 434, 533,
19 479, 407, 462.

20 PHIL WEISER: All right. I will read
21 this last six, and we'll see if we can get some
22 company here for you. 406, 434, 533, 479, 407,
23 462. I see we have attracted two other
24 individuals.

25 All right. So we have three

1 individuals out of eighteen. What we'll do with
2 the other fifteen is we will give them another
3 chance to approach some of the folks with us, and
4 if they're able to confirm that they'll want to
5 speak, we'll give them a chance at the end of the
6 day. We're going to do one more round now just to
7 see if we can find some others.

8 JOHN FERRELL: 424, 427, 449, 408,
9 505, 388.

10 PHIL WEISER: Let me just read that
11 again. It's 424, 427, 449, 408, 505, 388.

12 UNIDENTIFIED MALE: 408.

13 PHIL WEISER: We have 408. All right.
14 So we have four individuals who we've selected. We
15 have about 12 minutes before the first session
16 starts. Why don't we give you each two minutes or
17 so to offer -- I think sort of the high level.

18 The question the Secretary asked is
19 kind of the question in all of our minds. What are
20 the core challenges, concerns, and what are some
21 solutions and strategies that you all would
22 recommend? If you would please introduce
23 yourselves, that would be great.

24 FRED KIRSCHENMANN: Thank you. My
25 name is Fred Kirschenmann. I operate a 3,500-acre

1 poultry and livestock farm, organic farm, in North
2 Dakota, and I first of all want to thank the
3 Secretary and everybody else for this rich
4 conversation this morning.

5 I think one of my concerns that the
6 Secretary touched on but I think perhaps did not
7 articulate quite as clearly as it needs to be
8 articulated and that is that there are two sources
9 of seed stock that we absolutely have to pay
10 attention to now as we think about the future of
11 agriculture, and one of those which he alluded to
12 is the seed stock of farmers.

13 But if you really look at the 2007
14 census data, the problem is much worse than he
15 alluded to because we now only have 192,000 farms
16 that are producing 75 percent of our total
17 agriculture commodities, and 30 percent of our
18 farmers now are over age 65, and only 5 percent are
19 under age 35.

20 And if we don't address that problem,
21 then we have to begin to figure out how we're going
22 to have any kind of food security without farmers
23 because that's -- if these trends continue, that's
24 what we're going to be faced with.

25 The second seed stock is the seed

1 itself which farmers are using and producing or
2 feeding, and the problem is that we have lost about
3 three-fourths of our crop seed stock -- that is the
4 varieties of seeds that farmers have had
5 available -- and about 30 percent of our livestock
6 breeds, and as we move into a more uncertain future
7 with more uncertain climates, et cetera, we're
8 going to need more diversity, not less, that are
9 going to be locally adapted to these local
10 conditions, so we have to reverse that trend. The
11 farmers and their seeds, I think, are going to be
12 critical factors that we have to address.

13 PHIL WEISER: Thank you very much.

14 TODD LEAK: My name is Todd Leak. I
15 farm 2,000 acres with my brother in central Grand
16 Forks County, North Dakota. I'm a wheat and
17 soybean farmer. I'd like to thank the Secretary
18 today for allowing us to have this opportunity to
19 speak.

20 I'm a soybean farmer for 30 years, and
21 maybe about a decade ago, I was free to choose from
22 about a hundred different varieties of nongenome
23 soybeans. We didn't get genomes in our part of the
24 farming belt until about 2000. Today there's about
25 123 varieties of GMO soybeans that I have to choose

1 from and about 12 non-GMO. Of those 12 non-GMO
2 varieties, 6 of those are for the specialty food
3 grade total foods sprouting market. I'm not
4 involved in that anymore.

5 While six of those varieties were --
6 that remained to me were developed in the 1980s and
7 1990s and their disease packages, their host
8 resistance are far less than the GMO varieties, and
9 their yield is only about 70 percent of the GMO
10 varieties, and that is not because of the GMOs.
11 GMOs do not increase yield. There is no yield gene
12 trait.

13 The issue is that all of the research,
14 all of the breeding, is going into proprietary
15 genetically modified varieties of these. I am
16 therefore forced as a farmer to have to go to the
17 seed companies, these few seed companies that are
18 left, to purchase my seed.

19 So it's a combination of the utility
20 patents and the consolidation of the seed industry
21 which has entrapped me as a farmer into having to
22 utilize the GMO seed varieties. And that is what I
23 think is a problem.

24 The solution, I think, is to return to
25 the Plant Variety Protection Act as the sole

1 authority under which the regulation of the seed
2 industry and of variety protection is granted by
3 the government. Thank you very much.

4 PHIL WEISER: Thank you.

5 PAUL REDDICKER: Paul Reddicker. I
6 raise about 400 acres of corn in Iowa, northeast
7 Iowa, and I have about 1,200 cattle we feed out.

8 The last ten years or so, the packers
9 have really consolidated, JBS being the last one,
10 and I send a lot of my cattle to JBS right now. I
11 guess my biggest concern is I do a lot of forward
12 contracting, and on those contracts, when the
13 markets are, say, lower than what my contracts are,
14 they seem to be fussier on the grade of the cattle,
15 and we rely on USDA graders to keep the packers in
16 line when they're grading.

17 I think there should be
18 electronically -- the carcass grades should be
19 electronically monitored. I think some packers are
20 starting to do that. I think we should do more of
21 that because I've had certain loads of cattle where
22 I've had up to \$2,500 worth of deducts, and then if
23 the market seems to be a little better than what my
24 contracts are, all of a sudden, I don't have those
25 deducts on those cattle. And we take the cattle

1 out of the same pen, so there's some discrepancy
2 there.

3 As far as farm size, we all are
4 farming more acres or more heads of livestock to
5 make a living. The margins are slimmer as time
6 goes on. So I guess my biggest thing would be
7 probably -- since I do feed a fair amount of
8 cattle, would be to monitor what's actually going
9 on with those cattle when they get to the
10 slaughtering as far as keeping the records
11 straight, whose loads are whose, and that kind of
12 thing.

13 PHIL WEISER: Have you submitted a
14 comment, by the way, developing this point? I
15 encourage you to do that as well.

16 PAUL REDDICKER: No, I haven't.

17 PHIL WEISER: If you could. For
18 everyone, you know, we're reading all the comments
19 and particularly where in this case, you know, I
20 anticipate somebody talking in Colorado, it's great
21 to get that on the record. So thank you for
22 raising it now, and I encourage you all to think
23 about doing that as well. Thank you very much.

24 PAUL REDDICKER: Okay. How do I do
25 that comment again?

1 PHIL WEISER: So for people, the
2 website is www.usdoj.gov/atr/ -- Sorry. If you
3 Google USDA/DOJ workshops or any other search
4 engine, it will be the first thing that comes up,
5 so just search for USDA/DOJ or DOJ and USDA
6 workshops, and you'll find it. There's a way to
7 give comments.

8 TIM ENNIS: My name is Tim Ennis. I'm
9 an employee of National Farmers Organization. We
10 sell organic grain for farmers, primarily five
11 upper Midwest states. My comments are my own.

12 I think the issue of concentration,
13 that people in general public have a concept of
14 what's wrong with a monopoly, a John D. Rockefeller
15 type of monopoly where one person has sway over the
16 whole market because of it being monopoly.

17 On the other hand, I think that our
18 issues all concern a few numbers of buyers in our
19 monopoly, and I think we need to take a look at
20 models that others are out there. If someone has a
21 certain share of the market, they should be treated
22 as a monopolist because I think that our
23 agricultural markets are really dominated by the
24 situations that have been mentioned here on the
25 percentage.

1 My other comment would be if we take
2 1998 as an example of the last time there were a
3 lot of independent hog farmers, the prices in 1998
4 flushed out the last wave of truly independent hog
5 farmers.

6 And there have been some comments made
7 today that that was caused by foreign or exporting
8 forces. My reading of history is -- and it can be
9 checked -- that farmers in Denmark at the same time
10 were receiving \$38 100 weight when \$10 was causing
11 farmers in the U.S. to be forced out of business,
12 and I believe that all of those -- most of those
13 factors were related directly to the issue here
14 today of concentration, shackle space, and too many
15 companies that are in the too big to fail category
16 and not enough choices. Thank you.

17 PHIL WEISER: Thank you. So I'm just
18 going to read through the numbers you called, and
19 if people are here and we can't get you now, we'll
20 get to you later, but if you're not here, then
21 we'll go to others later. 424, 427, 449, 408, 505,
22 388, 406, 434, 533, 479, 407, 462, 383, 390, 396,
23 485, 391, 386, 385, 409, 392, 465, 411, and 441.
24 We have one other individual here.

25 Anyone else from that group who wants

1 to speak, please come forward, at least a signal
2 that you're still interested. If not, we'll start
3 the end of the day with a new group of folks. Yes.
4 I take it we have one more individual here. Great.

5 FRED BOWER: I'm Fred Bower, and I
6 farm in Minnesota. I'm also a seed dealer. I've
7 been a seed dealer for 18 years. I sell seed for
8 Garst Seed Company.

9 What I was going to mention is when I
10 started farming thirty-four years ago, there were
11 fifty seed companies. At the present time there
12 are four. We are not being treated properly as far
13 as price. When the -- when the amount of seed
14 dealers goes down, the competition decreases, and
15 they kind of run of show of what they want to say
16 is the price. It was way better to have more seed
17 companies involved than to have fewer seed
18 companies at the present time and pay through the
19 nose for a seed.

20 PHIL WEISER: Thank you. You are
21 anticipating our panel to follow which will discuss
22 the issue around seeds, but before that, we have
23 one more individual?

24 ELDON McAFEE: Yes.

25 PHIL WEISER: Great.

1 ELDON McAFEE: Or do you want me to go
2 now?

3 PHIL WEISER: No, no. Go ahead now,
4 and we'll start the new batch at 4:30.

5 ELDON McAFEE: All right. My name is
6 Eldon McAfee. I'm an attorney here in Des Moines,
7 and I represent the Iowa Pork Producers Association
8 and other commodities organizations, and just I
9 think one of the major points that we believe is
10 being missed here in this discussion mainly
11 regarding contracts, livestock contracts
12 specifically, is there's a critical issue as to
13 what do we mean by contracts? And it's missed by a
14 lot of people.

15 We have marketing agreements that are
16 used by those who own the livestock and enter into
17 agreements for the marketing of that livestock with
18 packers, processors, et cetera, and then we have
19 the production contracts. Those are the
20 contracts -- and to many people this is elementary,
21 but we think it gets lost in the shuffle. The
22 production contracts are those where one party owns
23 the livestock and puts it in someone else's care to
24 take care of it. And the ownership of the
25 livestock does not transfer.

1 And there's a lot of discussion about
2 contracts, and then sometimes marketing agreements
3 get included in that, but the question is, are they
4 helpful to producers? Is that something that our
5 producers should be using?

6 And I think the critical issue here is
7 choices. One of the speakers this morning talked
8 about choices. And here we need choices for these
9 producers. All of our farmers need choices. Some
10 farmers for financial reasons, financial
11 management, the production contract is the vehicle
12 to use, and we've seen a lot of farmers benefit
13 from production contracts. Others who want to own
14 the livestock themselves may choose to use
15 marketing agreements or they may choose to market
16 their livestock without agreements.

17 Again, the key is for financial
18 management tools to have those choices, and we urge
19 the USDA, the DOJ, to be careful on how we look at
20 these tools and make sure any regulation recognizes
21 the value of these tools to everyone and, again,
22 the choice whether they use them or not.

23 And I guess I'd like to just end up
24 with a couple of key points. One, I've seen a lot
25 of the producers I represent, a lot of individual

1 producers here in the state of Iowa, and I've seen
2 them when they're done with the production
3 contract, they originally got the loan to build the
4 hog building, the cattle yard, et cetera. When
5 they got that loan, they got the loan because they
6 are using a production contract.

7 When that contract is over, I see many
8 of the clients I work with, they stick with
9 production contract because it has worked for them
10 as a financial management tool. Other producers
11 choose differently.

12 I'd like to just conclude my comments
13 with a point about the recent contracting
14 requirements that went into effect under the
15 federal farm bill, and the point I want to make
16 here is please, let's be careful how we enforce and
17 implement some of this because right now, as I
18 understand it, there is -- I understand what was in
19 the farm bill, and there's a requirement that a
20 disclosure be made if you have a production
21 contract and if there are large capital investments
22 required.

23 I represent a number of individual
24 producers, and some of them are being subjected to
25 Packers and Stockyards enforcement actions for not

1 having that disclosure in the contract with the
2 contract grower, but the contract doesn't require
3 large capital investments, but the law is being
4 interpreted to require the disclosure even if you
5 don't require the large capital investments. I
6 think that's absurd, and it's leading to a lot of
7 confusion out there for producers. Thank you.

8 PHIL WEISER: Thank you for your
9 comments. So just to remind people our next panel,
10 please come up. Jim McDonald from USDA is going to
11 be --

12 DAVID RUNYON: I have 388.

13 PHIL WEISER: 388? All right. Like I
14 said, we've got time for one more individual before
15 our next panel.

16 DAVID RUNYON: Thank you. I'm David
17 Runyon. I farm in Indiana. I want to thank you
18 for having this opportunity to speak here.

19 I raise corn, wheat, and soybeans
20 along with two children on my farm. Monsanto
21 pursued me back in '04 because I had 1 1/2 percent
22 contamination of their soybean product in my seed.

23 In July of 2004, two investigators
24 came to my home, and I assumed they were magazine
25 sales or magazine surveys. Excuse me.

1 They did not present themselves as being
2 investigators from Monsanto or subcontracted by
3 same.

4 I gave them some of my information
5 before I realized they wanted copies of my food
6 grade contracts. They wanted to know who I was
7 doing business with. Then I realized something was
8 going on. I turned around and walked inside my
9 house.

10 Four days before Thanksgiving of '04,
11 they came and sent me a Fed Ex letter from St.
12 Louis giving me seven days to turn over all my
13 production records. The only problem is I've never
14 signed a technology agreement nor do I use their
15 products.

16 Contacted an attorney. I knew I had
17 to go -- within Indiana we have a farmer protection
18 law, so I had to go to Ft. Wayne, Indiana, to the
19 courthouse, and it was best -- federal
20 courthouse -- it was cheapest for me to find a
21 criminal attorney within walking distance, so
22 that's what I did.

23 And he advised me to turn over my seed
24 receipts, my herbicide receipts, and where I
25 purchased my seed. We did that. That wasn't

1 enough. They wanted to search my farm.

2 Comes along in February of '05 they
3 send me a letter stating that they have an
4 agreement with the Indiana Department of
5 Agriculture to search my farm. Me being on top of
6 politics realized that was not voted in. We did
7 not have an Indiana Department of Agriculture until
8 April of that year.

9 So my attorney and I decided we'd go
10 on the offensive side. We asked them three
11 questions. One is, on what basis were they doing
12 this investigation. Okay? The next question was I
13 wanted a copy of that agreement. And also I wanted
14 to see a procedure manual for sampling my farm of
15 which they've never responded. They ended whatever
16 they were doing to me and quit. Okay?

17 And what I'm saying now is the
18 liability needs to be placed on the patent holder.
19 Ms. Johnson was up there, and she was stating that
20 don't pit farmer against farmer. In my case whom
21 do I sue but my neighboring farmers? Because they
22 are taking the liability when they sign that
23 contract. And that's wrong. That's why it should
24 go back to patent holder.

25 We need to revoke these utility

1 patents because they're just not a good thing for
2 what we're doing here. The future is just
3 unbelievable. We need -- I need a choice of seed.
4 I'm down to planting three varieties of public
5 soybeans. Most of them are coming out of the state
6 of Ohio. There's no new varieties coming out.
7 There's no new funding from the federal government
8 for public variety of beans, yet in Ohio this last
9 year, the top yielding soybean was a public -- was
10 a conventional soybean, beat out all of Monsanto's
11 technology.

12 People back home -- I have some people
13 back home that are farmers, seed dealers, and
14 breeders for companies that are unwilling to
15 testify because of a fear of intimidation. Right
16 now as I'm speaking today, Monsanto is out
17 collecting checks from farmers' kitchen tables.
18 Okay? And they are signing gag orders, making
19 farmers sign gag orders, nondisclosure agreements
20 about these contracts that they're having to settle
21 out of court for patent infringements or being
22 accused of it.

23 PHIL WEISER: Sir, thank you for your
24 testimony. Like I said, it's timely because this
25 next panel we're going to have is going to be on

1 seeds.

2 And then we're going to have another
3 panel on broad trends, picking up some of the other
4 things we've talked about, a short break, and then
5 we'll go to our enforcer panel, and then at 4:30
6 we'll pick up with more testimony.

7 Probably, Jim, if you want to
8 introduce the panel and turn it over to you.

9 JAMES MacDONALD: Thank you, Phil.

10 (Off-the-record discussion.)

11 JAMES MacDONALD: Good afternoon.

12 Welcome to the panel on dynamics in the seed
13 sector. My name is James MacDonald. I'm from the
14 Economic Research Service of the USDA. We have a
15 panel of very well-informed speakers. I'm going to
16 introduce them shortly.

17 The goals of this panel are to have a
18 discussion. What I'm going to do is introduce some
19 initial questions to specific speakers to aim the
20 draw of the discussion towards the set of policy
21 issues that we're concerned about.

22 Our goal is to identify those major
23 issues, to identify areas of disagreement to help
24 us for further fact-finding. One point I need to
25 make is we will attempt to take questions from the

1 audience as well. The way we're going to do that
2 is you can see kids in the FFA jackets down the
3 hall passing out cards. If you fill out some
4 questions, pass them back over as we go on, they're
5 eventually going to get moved up to me, and we'll
6 aim to fit those in, if we can, in this fairly
7 short period of time that we have to work with.

8 Let me just walk through some brief
9 introductions. The gentleman sitting to my left is
10 Ray Gaesser. Ray is a farmer from Corning, Iowa,
11 where he produces approximately 6,000 acres of corn
12 and soybeans. He's been active as a leader on the
13 Iowa Soybean Promotion Board and the Iowa Soybean
14 Association and the American Soybean Association.

15 To Ray's left is Neil Harl, the
16 Curtiss Distinguished Professor in Agriculture at
17 Iowa State University. Dr. Harl's main areas of
18 interest include organization of the farm firm,
19 taxation, estate planning, and legal and economic
20 aspects of farm finance. What I think I found most
21 impressive is that Neil has had over 3,300 speaking
22 appearances in 43 states. Yes, 3,300. I might bet
23 that puts him ahead of the Secretary.

24 Next, Dermot Hayes is Professor of
25 Economics and Finance at Iowa State, leads the

1 policy task force at the Plant and Science
2 Institute at Iowa State. Neil (sic) and his wife
3 farm 900 acres of corn, soybeans, and cattle.

4 Next is Diana Moss. Diana is the vice
5 president and senior fellow of the American
6 Antitrust Institute. An economist, Diana has
7 managed projects for AAI including antitrust
8 mergers and acquisitions, regulatory reform,
9 network access across a wide range of industries
10 including transgenic seeds.

11 At the end of the table, Jim Tobin is
12 Vice President for Industry Affairs at Monsanto
13 where he served in various agricultural marketing
14 and commercial development positions since joining
15 the firm in 1983. Prior to joining Monsanto, Jim
16 was a member of the agricultural extension service
17 in Iowa. He's a member of the board of delegates
18 in the U.S. Grain Council, has served on the
19 National 4-H Council and is the past chairman of
20 the American Seed Trade Association.

21 Okay. What I'm going to try to do is
22 cover three broad areas. We're going to start with
23 a discussion focused on how we got where we are
24 today. What are the driving forces that has driven
25 the seed industry to its current structure?

1 Second broad area of questions are
2 going to involve current status of competition in
3 the industry. And the third set of questions for
4 which we hope to hold the most time, the last half
5 hour of the session, is going to focus on the
6 future and future -- and emerging policy issues as
7 we enter a world into which some seeds are going
8 off patent.

9 Let me start with historic
10 development. My quick summary of how we would
11 think about the seed industry today, which many
12 people have touched on already, is we have a small
13 number of major firms that develop traits, sell
14 those traits through their own seeds, and also
15 license those traits to independent seed companies.
16 We have a declining number of those independent
17 seed companies.

18 In addition, we've had substantial
19 increases in private research and development
20 spending but decline certainly in real terms in
21 public research and development spending on the
22 crop science.

23 I'd like to direct my first question
24 to Neil Harl and let him take a shot at summarizing
25 why we've seen that type of major shift in the last

1 20 years to the type of structure we see today.

2 NEIL HARL: Thank you very much. Are
3 we on?

4 JAMES MacDONALD: We're on.

5 NEIL HARL: We're on. Actually, it's
6 going to require more than 20 years. As I pondered
7 this over the last several days, I concluded that
8 really we needed to divide our past into three
9 eras, and focus on A, technology and B, control and
10 how those have changed over the time period, and
11 I'm going to emphasize the control side more than I
12 am the technology side because most of you are
13 fully aware of that.

14 So I'm going to have just a few
15 comments about the open pollinated era, partly
16 through nostalgia, and secondly, the area of
17 hybrids from conventional breeding and third, the
18 biotech era. There were three major legal
19 developments during that time frame. And I can say
20 with some confidence I don't believe we handled the
21 third one very well as a matter of public policy.
22 And it didn't come through Congress. It came from
23 the Supreme Court.

24 Now, as we ponder this task, the open
25 pollinated era continued until the '30s, and I can

1 tell you that as it came to its end, it was an
2 interesting experience. At age three in February
3 of 1937, I was assigned the task by my father of
4 budding and tipping ears, shelling the irregular
5 kernels off because they didn't go through the
6 planter plates well, and I had the whole month of
7 February to do it, and I used the whole month of
8 February. That was my dad's seed for the 1937 year
9 in the last year he planted open pollinated because
10 he noticed that two of his neighbors had some hybrid
11 seed, and while he had been preaching to me for
12 quite some time, you can't afford to pay the price,
13 the outrageous price they pay and require for
14 hybrid seed, which was a few dollars a bag, but
15 after he saw the yields, he was convinced that that
16 was a good idea.

17 And so moved into the next era. But
18 that era, the technology was simple, although labor
19 intensive. The farmer had total control over the
20 ears, the seed, and the crop, but that was balanced
21 against, of course, the fact that the yields were
22 not as great as the hybrids were.

23 The era of hybrids was assisted by the
24 land-grant universities, and many of you know the
25 land-grant universities essentially provided the

1 inbred lines throughout the period from the onset
2 of the hybrid period until at least the mid- to
3 late 1970s, and we'll talk about that transition in
4 just a moment.

5 Now, neither the land-grant
6 universities nor the seed companies retained any
7 control or ownership over the seed or its genetic
8 makeup until at least 1970. There had been a piece
9 of legislation passed in 1930, the Plant Patent
10 Act, but the Plant Patent Act was very narrow. It
11 only applied to asexually reproduced plants. So it
12 was really horticulture, and most of our farm-type
13 seeds did not qualify for protection, intellectual
14 property protection, under the Plant Variety
15 Protection Act.

16 But we need to watch this because as
17 we get to the end of the patent period, we're
18 concerned about the existence of patent rights, but
19 we're also concerned about the existence of PVPA
20 rights as well, and those can lurk where you don't
21 necessarily have a patent right. So we want to
22 emphasize that point.

23 The producers still had complete
24 control over the seed and over the crop through
25 this period of conventional crop breeding. The

1 universities, generally the land-grants generally
2 provided at little cost, in some cases at no cost,
3 to the seed companies, and then they would complete
4 the hybridization process.

5 During this period the attitude was
6 fairly widespread that seed was considered to be in
7 the public domain. As a matter of fact, I remember
8 in some degree of involvement and a couple of
9 instances where veteran seedsmen -- they called
10 themselves seedsmen. There were women involved,
11 but they never did get around to calling it
12 seedswomen, but the seedsmen believed, many of
13 them, that seed was in the public domain, and in
14 one case one seedsman grabbed a fist full of seed
15 from the wagon of a competitor. In another case a
16 seedsman went on a midnight foray into the fields
17 of a competitor and harvested a few ears. Didn't
18 think anything was wrong with that. That was the
19 attitude, the attitude until we got to the end of
20 that period, the beginning of the biotech era.

21 Now, coincident with the beginning of
22 laboratory manipulations, rather than field -- the
23 type of conventional crop breeding that had been
24 going on, there was a scramble for germplasm
25 because the Supreme Court, the Supreme Court in

1 1980, decided a key case that allowed the patenting
2 of life forms for the first time.

3 Now, just a little bit of detail here
4 because the literature is not exactly clear on this
5 point. Some think the Supreme Court reversed the
6 patent examiner. Actually, the patent examiner had
7 said no, you can't patent life-forms. And the
8 Board of Patent Appeals agreed. The next level up,
9 the third level up, said "Well, we think that we
10 have to reverse that because times are changing,"
11 and it was that opinion that was affirmed by the
12 U.S. Supreme Court by a five-to-four decision.
13 Congress was not involved.

14 And moving into the patenting of
15 life forms was a new area for patenting, and we
16 continued to have problems because at no point did
17 Congress exercise any kind of oversight over that
18 patenting process.

19 So that was followed in the 1990s by
20 an almost frenetic move to acquire firms, and the
21 number of seed producers dropped from about 300
22 plus to the handful that we have today, those that
23 were large enough to muster capital for genetic
24 manipulation through laboratory operations and to
25 buy out competitors without much fear of a

1 challenge from Washington, DOJ or FTC.

2 Now, the discovery and development of
3 Roundup Ready, which was patented, coupled with the
4 use of restrictive licensing gave the company
5 unprecedented influence over even seeds sold by
6 competitors through the use of restrictive
7 licensing arrangements and incentives, economic
8 incentives.

9 The high demand for seeds containing
10 that technology assured the competitors would agree
11 to the terms of the licensing agreements. The terms
12 and the use of incentives permitted the patentee to
13 extend the span of control.

14 So what we have is the transformation
15 of the seed business in that 80-year period, almost
16 unbelievable in nature and in scope. No one in
17 1930 would have been able to forecast what happened
18 and then been terribly surprised if they'd seen it.

19 But I think our problems as we look
20 backward is that there was not sufficient oversight
21 over the various key developments during that
22 period, notably the decision to move toward
23 patenting of life forms.

24 And it isn't just agriculture that's
25 having problems. Medical research is also having

1 problems with respect to the patenting of
2 life forms because you can stake out a segment of
3 germplasm and keep others from being involved with
4 it.

5 So in very short order -- I think
6 that's more than my three minutes -- there are a
7 couple of other issues that I want to talk about
8 later on if we have the opportunity.

9 The big problem today, in my view, is
10 what happens at the expiration of patents? What is
11 it going to take to have a generic market? And
12 we'll, I think, be addressing that later on. I see
13 this as the next big obstacle.

14 I hope when we deal with this one, it
15 will be with a greater degree of insight and
16 possibly the Congress involved so that like the
17 1970 act, it represents a refereed conclusion based
18 on the various interests that have a stake in this
19 process. Now, I think that's --

20 JAMES MacDONALD: Neil, if you want to
21 speak about that, we'll bring you back in that last
22 session. You're using up all of your time.

23 NEIL HARL: Alright. Fine. Thank you.
24 Thank you.

25 JAMES MacDONALD: Let me -- key thing

1 we've identified and that people have spoken about
2 so far has been introduction of intellectual
3 property protection, particularly starting in the
4 famous 1980 Supreme Court decision.

5 Let's talk a little bit about the
6 outcomes from that up 'til now, and what I want to
7 do is ask Jim Tobin and then from him get some
8 discussion about how was that expanded patent
9 protection affected investment decisions in the
10 seed industry?

11 JIM TOBIN: Jim, thank you. It's a
12 pleasure to be here. I grew up on a farm in
13 southwest Iowa not far from here. My parents are
14 here. They're still farming near New Market. I
15 used to wear one of the blue jackets for New
16 Market. It's now consolidated into Villisca and
17 Bedford and Clarinda, so I'm appreciative of them
18 being here tonight or this afternoon.

19 What has intellectual property meant
20 to the industry? Let's start with it's attracted a
21 great deal of innovation, new investors, new
22 dollars, new opportunities for farmers to choose to
23 use products that help them make money.

24 The Roundup ready trait, which I'm
25 sure Ray can talk to, for our family farm, it took

1 away the need to walk the beans every summer, saved
2 a couple weeks of time. It helped my dad who does no
3 till farming grow soybeans in a sustainable way and
4 save the soil and made a tremendous difference for
5 farmers.

6 I'm sure many of you remember you
7 could drive down the road and see which farms were
8 using the Roundup Ready technology because they had
9 the cleanest fields. That's just the first step.

10 Today there are 23 different biotech
11 traits that are available to farmers in corn,
12 cotton, and soybeans, and more importantly, because
13 companies have seen this work, the opportunity to
14 get paid for these new innovations, as farmers have
15 chosen to use them, the pipeline is really full.

16 If you look at the corn and soy opportunities that
17 are coming, not just from one company but from many
18 companies, there are 50 different traits in that
19 pipeline that are listed as being worked on for the
20 next ten years.

21 Those traits get broadly licensed to
22 over 200 seed companies that let farmers decide
23 what they want to use. It was very important that
24 early on we recognized that you have to put the
25 very best germplasm with these traits or farmers

1 won't buy them, and that's why there's such a
2 connection to the seed industry because that's the
3 delivery vehicle.

4 It's an exciting time. There's a lot
5 of choice today. There's going to be a lot more
6 choice in the future, and there's tremendous
7 competition for the farmers' business.

8 JAMES MacDONALD: Thanks, Jim. We're
9 going to get a little bit of -- seek the panel for
10 a little bit of reaction in a moment, but I want to
11 get one more point in on this introductory topic,
12 and I'd like to get Ray Gaesser to speak about, from
13 his experience, how has farming changed on his
14 operation as a result of having these seeds?

15 RAY GAESSER: Thank you. And it's
16 really an honor to be here, as everyone else has
17 mentioned. Thank you, Mr. Secretary and others,
18 for allowing this to happen.

19 I'm a farmer with a family business.
20 My wife and I have been farming in Iowa for
21 32 years, and now I'm proud to say that our son has
22 joined our operation, and we're really happy for
23 that. And we've used technology over the years to
24 do a better job of farming, to help our friends and
25 our neighbors.

1 We partner with our neighbors actually
2 in helping them and us to pull together our
3 resources and maybe buy seeds in a volume, and that
4 gives us the discounts and allows us to be competitive
5 in the rural market.

6 I can't tell you how nervous I was the
7 first time I sprayed Roundup on my soybeans about
8 1996. I think a lot of you out here had that same
9 feeling. We planted the soybeans, a month or so
10 later, you know, they were about this high. And
11 they looked beautiful.

12 And here I'm putting Roundup in a tank
13 that I'm used to not doing and spraying it over the
14 top of my soybeans, and I'll tell you that I
15 watched that crop every day for a week. It was
16 right by the road, of course, and so were my
17 neighbors, but you know what? The technology
18 worked, and it transformed me, and it transformed
19 the agriculture in the United States, and so
20 technology has been very helpful for us.

21 And we need to be careful what we do
22 that we have the use of technology and that we
23 don't -- don't stifle innovation, but at the same
24 time with that innovation and with that market
25 share, we have responsibilities. We have

1 responsibilities that at the end of the patent that
2 farmers and consumers can benefit from that patent
3 and that we have the generic market that we can
4 save money on our seeds that we plant, that we need
5 to know that those seeds are registered around the
6 world, and I think that's one of the big concerns
7 that we have, is the registration process. It's
8 the process of moving through patent expiration,
9 and I hope that's an important subject here today.

10 JAMES MacDONALD: Thanks. I have to
11 be the tough guy on time, which is why I'm cutting
12 people off and driving them. We got about two
13 minutes left on this initial issue of how the policy
14 changes, particularly regarding patenting, have
15 affected investment and farming decisions in the
16 industry. Have any other reactions from the panel
17 on what's been said so far?

18 Okay. Let me move on. Let's talk a
19 little bit about current state of the competition
20 in seeds. I'll direct it straight to Diana Moss.
21 How should I think about structure? Is this a
22 highly concentrated industry?

23 DIANA MOSS: Am I on?

24 JAMES MacDONALD: You're on.

25 DIANA MOSS: Yes. So first of all,

1 thank you very much for the opportunity to be here.

2 It's an honor, and I've learned so much so far

3 today listening to these different perspectives.

4 Jim has asked me to talk a little bit

5 about the structure of the markets that are

6 important here, and I think one thing to put out

7 there initially is to think about what these seed

8 platforms look like, and a platform or a system as

9 we think of them in antitrust economics and law

10 consists of multiple markets, so you have upstream

11 markets, in this case the market for traits, and

12 you have a market below that, or downstream market,

13 for traited seed.

14 There's obviously -- there are levels

15 in between. Germplasm could be considered

16 separately, depends who you talk to, but the point

17 is these markets form platforms, and we have an

18 increasing degree a vertical integration between

19 trait developers and seed companies, and the number

20 of independent seed companies which have heretofore

21 been a very important channel in getting to the farmer

22 have decreased dramatically in size over time, and

23 that's an important thing.

24 So when we look at these seed

25 platforms, we look at traits markets. We look at

1 traited seeds. Really the question for us is,
2 what are the alternatives? So good antitrust
3 analysis always pursues the questions from the
4 consumer's perspective. What are the alternatives?
5 So what alternatives are there amongst traits for
6 herbicide tolerance and insect resistance? What
7 alternatives are there for seeds, for traited
8 seeds?

9 So if you ask the question in that
10 way, I think it gets you to a very important place,
11 and that is if you look upstream at traits markets,
12 they are very, very highly concentrated. There is
13 in effect a monopolist in the market for traits,
14 and that is Monsanto. It's an inescapable fact.

15 What I am saying says nothing about
16 the value of innovation. We think innovation is
17 important. We think the patent laws in the United
18 States are important in promoting innovation. If
19 we didn't have them, we probably wouldn't have the
20 type of risk-taking behavior that we do that
21 provides new products, so innovation is important.

22 The question moving forward is, how
23 concentrated are those markets? Well, they're very
24 concentrated. And are there alternatives available
25 in those markets? And I think the answer is -- and

1 this has been the source of much of the
2 controversy -- there aren't many alternatives
3 upstream. Alright?

4 Now, if we look downstream, what we
5 see are markets for traited seed, so Monsanto has
6 broadly licensed its technology. I think that's
7 probably at its core a very good thing. We will
8 get into questions about how that technology has
9 been licensed and whether it actually promotes or
10 frustrates competition.

11 But I think what's deceptive about the
12 downstream traited seed markets is they give the
13 illusion of choice. There are lots of brands.
14 There are lots of varieties. And that's all good.
15 But if you connect the two markets, that's where we
16 start asking some really hard questions.

17 And the good analogy is looking at
18 your computer. If you look at your computer, what
19 do you see? You see one operating system. You can
20 buy a Dell. You can buy an IBM. You can buy a
21 Compaq. You can buy a Sony. But when you turn the
22 thing on, there's one operating system. And the
23 analogy is very good on the seed side.

24 Similarly, you can turn on your
25 computer and see what makes it work, and that's a

1 microprocessor chip. Well, who's out there
2 providing microprocessor chips? There's Intel who
3 has about an 80 percent market share, and then
4 there's AMD which has fought very hard for many
5 years to get a foothold in that market.

6 So the point here is that we have two
7 markets. The upstream market for traits is very
8 highly concentrated. It's essentially monopolized
9 by a single firm. The downstream market has more
10 competition, but it's still very highly
11 concentrated.

12 Some of the cause of concentration
13 obviously are mergers over time, both vertical
14 mergers which link together these two markets, but
15 also the acquisition of successive seed companies
16 over time has created concentration downstream.
17 Alright?

18 There are incentives once you have a
19 monopoly to extend your monopoly or to maintain
20 your monopoly, and I think that very question is
21 what we're trying to get at today in some of this
22 public discussion.

23 Effects of concentration? Obviously
24 less choice. Less choice for seed companies
25 seeking to create new products, less choice for

1 farmers who want to shop around and access other
2 products.

3 Another result of less competition, or
4 concentration, are higher prices. We've seen --
5 Dermot is going to talk about higher prices here in
6 just a moment. That's a grave concern, really
7 grave concern, I think.

8 And we have to separate the high price
9 argument, I think, from the argument that, well,
10 higher prices are okay because farmers have so much
11 more productivity. I think the two have to be
12 separated to have a really frank discussion about
13 the effects of concentration and price.

14 The effects of concentration also
15 affect innovation. There's a connection between
16 competition and innovation. We generally get more
17 innovation if there's competition as opposed to
18 having one firm dominate and control the process.

19 And finally, later on we'll talk about
20 what to do. And I think that will enter into the
21 discussion about generics. Thank you.

22 JAMES MacDONALD: Let me just remind
23 our panelists that we need to speak into the
24 microphones so they can hear us a little bit better
25 in the back, so pull the microphone closer to

1 yourself.

2 Any reactions off the panel on Diana's
3 discussion of concentration?

4 JIM TOBIN: If I could, Jim, I'd like
5 to --

6 JAMES MacDONALD: Go ahead.

7 JIM TOBIN: I've read your paper, and
8 I appreciate that people feel very strongly about
9 this. I'd like to start by saying that the
10 operating system model is not a good analogy for
11 the seed business, and let me tell you why.

12 If you want to grow soybeans, you
13 don't need Roundup Ready to make the soybeans grow.
14 They grow just fine. There are people who grow
15 conventional soybeans -- and Ray can speak to
16 this -- who do just fine.

17 It's because farmers choose to use a
18 herbicide-tolerant trait that they ask the seed
19 company to have that for them, and they decide
20 every year what they're going to plant.

21 Let's go back to the early days of '96
22 when Roundup Ready first came to the market. There
23 was another trait called STS that was developed by
24 DuPont, was available at the same time, both --
25 some of you probably planted that.

1 Every year farmers get to decide, for
2 example, do you want to use Roundup Ready, do you
3 want to use STS, or would you like to use
4 conventional? There are weed control systems to
5 handle each one of those. There are a number of
6 choices. Farmers decide.

7 Yes, we broadly license our Roundup
8 Ready trait, but that's a good thing. We allowed a
9 broad group of companies in the industry -- and I
10 helped in the early works on that. People really
11 liked the idea that they could get these traits in
12 any brand of seed that they wanted. It's worked
13 well for farmers. It's worked well for Monsanto.

14 Today there's another new trait called
15 Liberty Link that's just been launched by Bayer, so
16 innovation continues. I told you earlier that
17 there's 50 new traits in the pipeline for corn,
18 soy, and cotton, and that, I think, is really good
19 evidence that others look at this market and say
20 "There is an opportunity, and I want to invest in
21 it."

22 So there is value. Farmers make
23 decisions. They're very, very good at making those
24 decisions, and that's why we have high market share
25 with Roundup Ready in soybeans. It's not because

1 you have to have Roundup Ready as an operating
2 system to make the soybean variety yield and grow
3 on the farm.

4 JAMES MacDONALD: Let me quickly bring
5 in one point Jim touched on and several members of
6 the audience touched on. Access to conventional
7 seeds. About 85 percent of corn acres is biotech
8 varieties now; 91, 92 percent of soybean acreage
9 according to USDA statistics.

10 I want to direct a quick focus
11 question to Ray and ask him to address the question
12 of do we have sufficient access and sufficient
13 plant breeding programs for non-GMO seeds?

14 RAY GAESSER: Well, I guess I would
15 have to admit that the plant breeding to
16 conventional seeds has gone down as a percent, but
17 everyone I've talked to, especially in soybeans
18 around the country, there is access to conventional
19 seeds in our local -- used to be a co-op, and now
20 it's another company owns that but that we have a
21 really good market for conventional soybeans there
22 with a \$2 premium per bushel for farmers who choose
23 to grow them.

24 We have the Asoya group that we talked
25 about this morning that had their own conventional

1 varieties and were successful for a while but found
2 that consumers weren't willing to pay, and I guess
3 we don't understand that exactly. We're trying to
4 offer things that the consumer wants, but maybe
5 they're not always willing to pay the premium.

6 At Iowa State University here,
7 Dr. Walt Fehr, the check-off, the Iowa check-off
8 and the national check-off, funds that program
9 greatly, and I'll tell you that Dr. Fehr is almost
10 a god in Japan because of the food grade soybeans
11 that he grows there.

12 So there is opportunities. It is
13 somewhat limited, but in relation to the 8 percent
14 or so of the total demand for soybeans, it's
15 probably not too far out of line. There is
16 availability.

17 JAMES MacDONALD: Any reactions on
18 that anybody else on the panel want to offer on
19 that? Let me get to pricing. Spend a little time
20 on this.

21 I'm going to direct a question to
22 Dermot Hayes. Again, according to other USDA
23 statistics, average prices for biotech soybean
24 seeds rose by a little over 60 percent between 2004
25 and 2009, according to our numbers. Average prices

1 for biotech corn rose by about 93 percent in that
2 same period.

3 Dermot, do you have some analysis of
4 why we might have been seeing those increases? What
5 do you think is going on?

6 DERMOT HAYES: Sure. I better
7 apologize to everybody. I've got a funny accent.
8 I grew up in Ireland, and I moved here in '81.
9 Still haven't managed to get rid of the accent.

10 I farm a little bit with my wife, and
11 last spring we went into Sam's Club and saw corn,
12 non-GMO corn, for 100 bucks a unit or about
13 40 bucks an acre, but we chose to spend about a
14 hundred dollars an acre or 250 for the seed we
15 bought, and that's because the seed companies are
16 packing in so much more into that bag, and
17 apparently a lot of other farmers made the same
18 decision we did because the average price of seed
19 is closer to the high end rather than the low end
20 that was available to us, and that's because they
21 could -- it cuts our herbicide bill and our
22 pesticide bill, and we get a yield boost relative
23 to the seed we could have bought for 100 bucks that
24 was -- that was five or six years old. So that's
25 the answer.

1 But there's a more interesting
2 question, and that is the U.S. has been running a
3 great natural experiment. We have strong IP for
4 corn, and we have a very weak IP for wheat. The
5 strong IP has attracted innovation, and corn yields
6 are going up, and despite a bad summer last year,
7 we had record corn yields.

8 Wheat yields are flat and have been
9 flat for quite a while. I went back to the year I
10 came to this country, '81, and we had more wheat
11 acres than corn acres. There's been a net transfer
12 now from wheat to corn with 10 million more acres
13 of corn than wheat. Used to be corn produced about
14 three times more volume than wheat. Now corn
15 produces six times more volume than wheat because
16 it attracted acres, and the yields have grown so
17 much faster.

18 So let's think about that Kansas wheat
19 farmer. Former Kansas wheat farmer is now growing
20 corn. Are they getting ripped off by the corn
21 companies? Well, why did they grow corn? Why did
22 they switch out of wheat? Are we in the public
23 sector doing a good job of getting new products to
24 market? We probably are but not as good as the
25 private sector.

1 So I would argue that the natural
2 experiment would favor what's going on with corn,
3 and the benefits that have grown. Higher yields
4 benefit the consumers and producers.

5 JAMES MacDONALD: Anybody else want to
6 give us a reaction on prices?

7 RAY GAESSER: One other comment. I
8 just read an article a couple of days ago, the
9 University of Missouri's yield trials. In 2000
10 about 30 percent was conventional varieties. 2006
11 it was only 1 percent. But last year it was back
12 up to 15 percent, so we are seeing some -- maybe
13 some demand or some more interest in conventional
14 varieties, and I think there's a place for every
15 one of us in this market.

16 JAMES MacDONALD: This gives us --
17 we've got a fair amount of time left. That's good
18 for talking about the stuff that's really emerging
19 powerfully now and where we have a series of major
20 policy issues emerging facing several departments
21 of the government as well as industry.

22 The Roundup soybean trait goes off
23 patent in the crop year for 2015. In the years
24 after that, several other traits are going to go
25 off patent. We have what in essence is going to be

1 another brave new world of how we handle policy for
2 these things. We have a set of issues we want to
3 cover.

4 I want to start off by directing a
5 question back to Ray and asking about in this
6 world, it appears I keep hearing from farmers that
7 things are highly uncertain, and they don't like
8 uncertainty, making long runs of planning crop
9 planting decisions, and I'd like Ray to address the
10 issue of where this uncertainty arises and what he
11 and his colleagues feel are needed for better
12 clarity and transparency in the process, so Ray is
13 going to start us off.

14 RAY GAESSER: Thanks a lot, and our
15 groups at the Iowa Soybean Association and American
16 Soybean Association, we've spent a lot of time
17 talking to everyone in the industry from large tech
18 providers to small seed companies to universities,
19 and we find that at the top of the pile, it really
20 comes to be the uncertainty in the market, the
21 uncertainty in license agreements, the uncertainty
22 in the breeder's ability to continue to use Roundup
23 Ready One particularly but also, you know, how they
24 will be able to use the Roundup Ready Two patent.

25 We're also concerned about future

1 traits in registrations, whether it's registrations
2 for the Roundup Ready 1. Will it continue around
3 the world? Who will be in charge of that? I think
4 that's the really big issue there but future
5 traits. And can small companies actually register a
6 product? Costs \$100 million to register a product
7 around the world, and that's part of our competitive
8 issue here. Small companies aren't able to access
9 that market, and we need to find a way to help them
10 through the system.

11 JAMES MacDONALD: Ray, let me just
12 bring us a little bit further along. Ray has
13 identified a big issue is registration. What I
14 want to do is take a little bit of time, a
15 significant amount of time, to talk about that.

16 I want to ask Jim Tobin to tell us
17 just a little bit about what exactly has been
18 involved in registration since it's a major
19 function of what Monsanto's been doing and something
20 we need to think about when we go to generic seeds.

21 JIM TOBIN: Yes. For the registration
22 people in the crowd, I'm going to really summarize
23 quickly, but when we register a product like the
24 Roundup Ready trait that Ray is talking about, we
25 received approval from the USDA, from FDA, and from

1 EPA, and each of them have a separate role to play
2 in the United States.

3 In the case of Roundup Ready, you get
4 deregulation in that process, and so there's no new
5 regulation work that has to be done for Roundup
6 Ready in soybeans. That's done. And when you go
7 around the world, Ray and his colleagues exported a
8 big part of their crop. It's a really important
9 part of their business. And so we register with
10 more than 40 countries around the world where
11 soybean or soybean products are sent.

12 About 27 of those countries represent
13 the European Union, and they're supposed to work
14 all together, but that doesn't always work quite
15 that way. We have to do a lot of things to make
16 sure that we have that in place.

17 There's seven countries that will
18 require either a renewal or a new registration over
19 a period of time, maybe three years, five years,
20 ten years.

21 What's in a registration package?
22 Well, if you stacked up the reports, there's about
23 50 reports that are about a foot and a half high.
24 The work is done by company scientists who are
25 developing the product, and we also hire

1 third-party experts to come in and help do
2 regulatory work.

3 You're looking at safety for food and
4 human consumption -- for food consumption and feed
5 use. You're also looking to ensure that the
6 product is effective. You're looking to ensure
7 that the soybean plant isn't changed in any way if
8 that's a claim that you're making, which is the
9 case here.

10 That work is very involved. It
11 doesn't cost \$100 million. What Ray was quoting is
12 the cost of bringing a new trait all the way from
13 the beginning step through regulatory approval. It
14 is expensive but it's not quite that expensive.
15 But that is what we invest in the whole process of
16 eight to ten years.

17 So the question then is, with these
18 regulatory approvals, what do you do when something
19 goes off patent? Let me just address that quickly.
20 Monsanto's patent will end with the planting of the
21 2014 crop, so in 2015, we'll no longer have a
22 patent on the Roundup Ready trait.

23 If someone licenses from us, a seed
24 company or you as a farmer, we won't collect
25 anything. We won't be owed any royalty. Our work

1 will be done relative to the licensing and getting
2 paid a royalty. However, because when a farmer
3 produces a crop, you want to make sure it has a
4 market, we've worked closely with Ray and others at
5 the American Soybean Association. We've committed
6 that we'll maintain this regulatory package, the
7 renewals that are needed in these countries around
8 the world, for a period of at least three years
9 after the patent goes off, so until the end of
10 2017.

11 Now, of course, Ray is concerned
12 because he's going to possibly be using some of
13 this material on patent, and he wants to make sure
14 there's a market. What we're proposing, and we're
15 willing to have a lot of people at the table for
16 this, we think that whoever wants to use it,
17 whatever seed company or developer that wants to
18 use the Roundup Ready trait off patent, we've put a
19 proposal together and provided it to the
20 bioindustry organization where trait developers
21 work on stewardship policies and said "If you want
22 to use this, we'll make it available. If you can
23 pay the cost of the registration, share that cost,
24 we'll continue that as long as you want us to do
25 it." Our data packages would be available. It's

1 about 1 to \$2 million a year to maintain this, so
2 we would welcome anybody in the industry that wants
3 to get involved in helping find a solution.

4 We think an industry approach is an
5 appropriate way to go, but we're open to a lot of
6 ideas and approaches to make sure that if farmers
7 want to use this, if breeders want to breed with
8 it, it will be available, and there won't be any
9 challenges with regulatory. And Ray, you have my
10 commitment and the commitment of my company that
11 we'll make sure that these regulatory approvals are
12 in place so that you can export your soybeans.

13 JAMES MacDONALD: Let me move this
14 discussion of the registration process along a
15 little bit. And I want to ask Diana for her view
16 on whether we need new rules or agreements aimed at
17 improving that process.

18 DIANA MOSS: Great. Thanks for that.
19 If I could just back up for 30 seconds and maybe
20 put a different -- a slightly different perspective
21 on this with Roundup Ready 1 going off patent, this
22 will be the first opportunity to have competition
23 in biotechnology seed, and that's a big thing.

24 There has been proprietary technology.
25 Again, that's attributable to our patent laws in

1 the U.S. That's good. It promotes innovation.
2 But once the patent expires, that is the -- that's
3 when the window starts to open.

4 I would argue the window opens long
5 before that, in part because the pipelines take a
6 number of years to populate with potential new
7 products. That means that rivals, rival biotech
8 developers in this world of stacked trait products,
9 need to get access long before the patent expires
10 to be able to seamlessly transition and have those
11 products ready for market by the time Roundup Ready
12 is off patent.

13 So there's potentially a gap here
14 where if we do not construct the right set of
15 policies and conditions and to smooth this
16 transition, all of this generic competition is in
17 jeopardy, and the people who suffer from that are
18 not only rivals in the industry but the seed
19 companies and the ultimate consumers.

20 We all deserve to benefit from generic
21 competition just like we have in pharmaceuticals,
22 and you all remember paying really big prices for
23 some of these branded pharmaceuticals that now you
24 pay literally pennies for.

25 So I would view this process as really

1 a two-part process. One is to work with the patent
2 holder, and Monsanto has stepped forward in a very
3 positive, constructive way. I do not think that
4 those commitments go far enough. I think there has
5 to be more work done on making data available. I
6 think there needs to be an extension of the
7 registration process in excess of three years.
8 There have to be commitments not to sue for patent
9 infringement if rival biotech developers want to
10 get R&D programs going. Alright?

11 Antistacking provisions have been
12 problematic to date and could easily, easily gut
13 the whole transition to generic biotech seed. And
14 I think it's really important to note that unless
15 this whole process is constructed smoothly and in a
16 way that promotes efficiency, what is sold outside
17 the United States will have a direct impact on
18 sales in the U.S., we all know that. Unless
19 you get your registrations, unless the process is
20 nicely dovetailed, what you expect to sell overseas
21 can impact what you sell inside the United States.

22 I don't think a legislative solution
23 is going to work fast enough. A Hatch-Waxman type
24 of approach that we saw on the generic
25 pharmaceutical side, I think, is unwieldy. It may

1 be a longer-term solution.

2 JAMES MacDONALD: Let me break in
3 right on that, not to stop you --

4 DIANA MOSS: Sorry.

5 JAMES MacDONALD: -- but to ask you if
6 you'll expand a little and tell people what you
7 mean by a Hatch-Waxman process.

8 DIANA MOSS: The Hatch-Waxman Act --
9 I'm no expert on Hatch-Waxman, but the point to
10 make is that Hatch-Waxman put into place certain
11 rules and regulations that enabled the promotion of
12 generic pharmaceuticals before they went off
13 patent. It enabled generic drug manufacturers to
14 work within some windows to bring these new
15 products to market by engaging in the research and
16 development.

17 And there are obviously many details
18 to be worked out. I think the devil is in the
19 details, but it really consists of a two-part
20 process: working with Monsanto and developing the
21 institutions to promote this. I would even suggest
22 a generic biotech seed organization, much like the
23 Generic Pharmaceutical Association. You get on
24 their website. They've got a whole set of policy
25 issues that can be nicely juxtaposed on what's

1 going on in biotech seed. So I think it's really a
2 two-pronged issue.

3 JAMES MacDONALD: I think Diana has
4 touched on the entire -- well, not the entire.
5 Diana has touched on the set of issues that we want
6 to cover. I'm going to ask first Neil and then
7 Dermot what their views are on the proper mix of IP
8 protection going forward as we look at this issue.

9 NEIL HARL: On this issue, I think the
10 important point is -- it's already been noted that
11 farmers don't want the biolawsuit, and so when
12 you're going generic, you want to be sure there is
13 total purity.

14 We've been through this with StarLink.
15 We know there's mechanical contamination. We know
16 there's pollen drift, all kinds of reasons why
17 patented material do get into other germplasms.
18 But there's more than that. There's also the PVPA,
19 the Plant Variety Protection Act. There could be
20 that kind of intellectual property protection
21 existing within a bag of generic seed, and that may
22 not be at all clear because you've thought, well,
23 this is just a Roundup Ready problem. There may be
24 other patented or PVPA protected rights within that
25 bag.

1 So we have purity issues, and this is
2 why I've concluded that I think it's necessary for
3 this to be a matter of regulatory action, not -- I
4 think industry should be involved. I think there
5 should be a process by which the best minds pull
6 together the limitations and conditions, and
7 restrictions that should be part of a generic seed
8 regimen, but I think it really has to come
9 eventually to the point of where we have the
10 enforcement power of government and the objectivity
11 and fairness that comes the same way.

12 JAMES MacDONALD: Dermot, do you have
13 anything to add?

14 DERMOT HAYES: Just to say that there
15 is an urgency about this. If we fail to maintain
16 our registration in China, then we will -- and the
17 year comes when that becomes an issue, we will
18 definitely have Roundup Ready 2 in our system.
19 Therefore we can't separate that back out of the
20 commodity system, so therefore we lose the Chinese
21 market, so what everybody has said here is we need
22 a third-party institution to accept an offer from
23 Monsanto to take that data and start that five-year
24 registration process and make sure it's finished in
25 time, and if anything good comes out of this whole

1 conference, it would be that third-party
2 institution.

3 My preference would be for the soybean
4 association or ASTA, but if Neil is suggesting a
5 regulatory approval, it's six of one and half dozen
6 of the other, but we definitely need to get that
7 going. Monsanto has made a pretty generous offer.
8 Most companies would actually sell that data, so I
9 think it's time to move, and I hope that the people
10 who are in that kind of authority in the room are
11 listening.

12 NEIL HARL: There has to be
13 unquestioned objectivity and standing in the
14 world economic community for it to really work, and
15 that's why I think a third-party presence makes a
16 lot of sense also.

17 JAMES MacDONALD: Ray, anything to
18 that?

19 RAY GAESSER: Yeah, at ASA we have
20 been talking about this issue a lot, and it is
21 really important to us, and we do -- everything
22 that Diana and everyone down the line said is
23 actually true. It's so important that we solve the
24 issue with Roundup Ready 1, but there's many other
25 traits coming on that will expire soon, and we have

1 to be -- acknowledge those needs also, but you
2 know, time is of the essence here.

3 We don't have a lot of time with
4 Roundup Ready 1 if we want to have the ability to
5 use it generically in the United States and around
6 the world.

7 JAMES MacDONALD: Jim, do you have
8 anything?

9 JIM TOBIN: Yeah, just a couple
10 things. As I said earlier, we welcome industry
11 involvement. We think there should be a lot of
12 people at the table when this is sorted out because
13 it is the first major trait coming off patent, and
14 we welcome insight and support in doing that.

15 I'd like to make just a few points so
16 people know what the generic picture will look
17 like. First of all, there are over 150 seed
18 companies that are licensed today to use the
19 Roundup Ready trait in soybeans. Every one of them
20 will have the ability to sell in 2015 Roundup Ready
21 in soybeans without any new regulatory work,
22 without any new legislation. That's already
23 possible because the soybeans reproduce; as they're
24 producing a seed, reproduce that trait.

25 There are also a number of stacks that

1 are already -- have already been enabled. The STS
2 stack that I mentioned earlier was planted on, we
3 estimate, about three million acres, so Roundup
4 Ready with STS is available and can be available in
5 the future.

6 We've enabled a number of other
7 stacks, a stack with Plenish, a new oil quality
8 trait that DuPont has. We made our data package
9 available to them so they could do that. There's a
10 new 2,4-D stack, 2,4-D trait, that's coming out
11 that there would be the ability for someone in the
12 industry to stack that, and we would provide
13 regulatory support for that.

14 So it's possible without new
15 regulation for quite a bit of this to occur
16 already, but we're very open to having discussions
17 about additional things in that area, and also the
18 regulatory support for the international approvals,
19 we think, is a good approach, and like I say, we've
20 made that offer to the industry, so just a few
21 things to clarify the discussion.

22 JAMES MacDONALD: Let me bring up a
23 related question and throw it out to the panel, which
24 is, is there a role for continued public investment
25 in plant breeding? What's that role? And what

1 should we be doing in the public sector that we're
2 not doing now in terms of supportive plant
3 breeding? Anybody want to take that?

4 NEIL HARL: I would like to address
5 that briefly. I was on the ACAB, the Advisory
6 Committee on Agricultural Biotechnology, in
7 2000 and 2002. It was really created to deal with
8 the Terminator. Some of you may recall the
9 Terminator controversy.

10 But we also dealt with the question of
11 how to cope with this very issue we're dealing with
12 here today, and the conclusion was that one of the
13 steps should be an increased amount of spending in
14 the public sector to encourage conventional crop
15 breeding, and we sent that, I think, to everyone in
16 positions of responsibility.

17 Unfortunately, since then we've had a
18 period of difficulty with respect to budgets, and
19 so the amounts have actually been declining over
20 time. So if there's enough public interest in this
21 to support it at Congress, support it at the state
22 level, I think this is a good thing to do.

23 It also adds another element to the
24 concentration issue because they can feed germplasm
25 into the system as they did back in the '70s, a

1 different kind of germplasm of course, but I think
2 it was an essential part of the total solution
3 today is to encourage that. It's just as I looked
4 ahead, I don't see much chance for that because of
5 the shortage of funds.

6 JAMES MacDONALD: Any reactions?

7 Anyone else?

8 RAY GAESSER: I'd speak to that a
9 little bit, and thank you. You're exactly right,
10 and the Iowa Soybean Association and American
11 Soybean Association has really been trying to push
12 that idea. At the check-off level, the state and
13 national do invest in soybean research, you know,
14 at our universities and small businesses.

15 But at the national level, there's
16 really a limited amount, and our associations have
17 been pushing for a long time for increased funding
18 for particularly soybean research because that's
19 our charge but for more research in production
20 agriculture and continuing the conventional traits
21 and giving a generic market to farmers and having
22 that option.

23 JAMES MacDONALD: Dermot.

24 DERMOT HAYES: One of my colleagues at
25 the university, Pat Schnable, is responsible for the

1 big project to examine the corn genome, and that's
2 fantastic research and something I'm very proud to
3 be associated with.

4 However, and there's a lot of other
5 good basic research on disease and in agronomy, and
6 that's all legitimate public sector/taxpayer-funded
7 basic research. We haven't -- if you look at the
8 wheat example, there is public sector research on
9 wheat, but I think university professors are not
10 real good at making cold sale calls and meeting
11 deadlines and forming teams, and so probably we're
12 not as good as we could be, as the private sector
13 is, at taking that basic research and turning it
14 into a sales product.

15 And therefore, I think there's a
16 natural break-even point, and that is the public
17 sector does a lot of basic research and should get
18 funding for that, but when it gets to the point
19 where a private sector company can do it more
20 efficiently, then I think we need to turn it back
21 over.

22 JAMES MacDONALD: Any other reactions
23 on the panel? Diana?

24 DIANA MOSS: Can I just make one
25 comment? Just listening to what's been said here,

1 I think perhaps with generic Roundup Ready 1, we
2 will get more public sector funding because of the
3 lack of restrictions on how the traits can be used
4 and combined with other traits to potentially
5 produce new products.

6 But I think the whole catch phrase
7 here is certainty. If we want a successful
8 experience with the development of generic Roundup
9 Ready, then there has been to be certainty, and the
10 certainty should have started about five years ago,
11 not today. I would argue that we're even
12 behind the curve even starting with this today.

13 It's really a very urgent situation
14 because of the lead times involved. Because of the
15 production of very complex stacked traited
16 products, certainty is the name of the game. If we
17 want to get new products to market, there has to be
18 clear -- clarity, there has to be certainty, there
19 has to be a clear set of rules that are enforced
20 and preferably that have all the stakeholders
21 involved and are pursued not only at the federal
22 level but hopefully at a regional or a state level
23 as well.

24 JAMES MacDONALD: I think looking at
25 the clock that we'll give Diana the last word on

1 that.

2 One point I want to make, I notice our
3 stenographer here. DOJ typically publishes the
4 results of these workshops. They publish the
5 transcripts on their website some -- I don't know
6 when that will be, but for those of you who want to
7 stay on top of it, review what's been said here,
8 that information is going to be available.

9 Our panel members will be around after
10 the panel for those of you who want to ask them a
11 little bit more about positions they've taken, and
12 right now I hope you'll join me in thanking the
13 panel members for their time and insights.

14 PHIL WEISER: We will be putting the
15 transcripts up online, and for those who can't be
16 physically here, we'll invite everyone's engagement
17 and discussion of the issues. The folks who joined
18 us here have come from different parts of the
19 country and some not so far within the great state
20 of Iowa.

21 Let me start by introducing them, and
22 then we'll start with a moderated discussion like
23 the one we just had.

24 Sitting right next to me here, Brian
25 Buhr from the economics department in Minnesota

1 where he also has earned the outstanding policy
2 contribution from the American Agriculture
3 Economics Association. Thank you for joining us.

4 Rachel Goodhue. I believe you're
5 native Iowan, is that right?

6 RACHEL GOODHUE: Yes.

7 PHIL WEISER: Good to have you back
8 home now, a professor at the University of
9 California Davis where she's in the resource
10 economic department.

11 Mary Hendrickson is someone known to
12 many of those here. She's not too far at the
13 University of Missouri. She's also a part-time
14 farmer on her family's farm, I understand.

15 MARY HENDRICKSON: No. Only
16 occasionally.

17 PHIL WEISER: Occasional farmer, I
18 guess. Sitting next to her is John Lawrence. John
19 is an agricultural economist at Iowa State and has
20 been named one of the top five most influential
21 people -- top twenty-five. Not top five. I just
22 promoted you a little bit. Seeing if you were
23 paying attention. Top twenty-five most influential
24 in the top -- in the past twenty-five years.

25 Chuck Wirtz comes to us as an

1 independent hog producer from here in Iowa and
2 finally Patrick Woodall who's the research director
3 at Food and Water Watch, a nonprofit consumer
4 organization.

5 So you should notice like the last
6 time, there will be folks with the jackets who are
7 going to be asking you to submit your comments.
8 You can see them in the back of the room there.
9 They will walk through. Take an index card. Feel
10 free to give them your comments so I can work them
11 into the questions.

12 I've got some questions that will get
13 us started. A number of them feed off of some of
14 the earlier discussions. The first is that farmers
15 are increasingly concerned that they are squeezed
16 in terms of the supply chain, and one of the
17 related concerns there that we'll hit more at the
18 end of the workshop in Washington is the
19 differential between what's pay for at retail
20 versus wholesale raises real concerns, and most
21 particularly from the antitrust perspective, there
22 has been discussions that buyer power, often called
23 monopsony, is part of this equation.

24 And I guess I'd like to ask folks to
25 explain a little bit about the dynamics of the

1 supply chain and where concerns arise. Patrick, if
2 you might be able to start off on this.

3 PATRICK WOODALL: Sure. It's great to
4 be here. We're very happy that this workshop is
5 being held and that DOJ and USDA are having these
6 important and, we think, long overdue discussions
7 on these issues.

8 I think for us what we see is that the
9 decline in real farm gate prices and a steady
10 increase in retail consumer prices for groceries
11 shows that there's big carveout in the middle where
12 the biggest companies, the consolidated companies,
13 are able to capture more and more of the value
14 chain in the marketplace.

15 This happens, I think, in part because
16 larger companies are able to exert more buyer
17 power, both over farmers, which has been shown in,
18 I think, all the livestock sectors pretty well but
19 also in other areas like the retail sector which
20 exerts tremendous pressure on food manufacturers,
21 on produce marketers, and even on consumers, so
22 what we see is that even when grocery mergers occur
23 that increase the kind of efficiencies, those
24 efficiencies aren't really passed on to the
25 consumers. They're captured by the companies and

1 not delivered to the beneficiaries of the people
2 buying food in the supermarket.

3 Obviously, on the farm gate side, we
4 see the opposite trend which is the pressures by
5 the meat packers and the shippers and the grocery
6 chains are pushing down and down on farmers, so the
7 real farm gate prices for almost everything have
8 been coming down for the past several decades while
9 the real cost to produce these goods has been going
10 up. And this puts kind of a double squeeze on the
11 situation. Farmers get a little less every year,
12 consumers pay more every year, and the companies in
13 the middle, the fewer and fewer companies in the
14 middle, are taking a bigger bite.

15 And that, I think, for consumers and
16 for farmers is an extremely problematic situation.

17 PHIL WEISER: Chuck, you are obviously
18 on the front lines raising hogs. Have you
19 experienced similar concerns? What's your
20 perspective on this issue?

21 CHUCK WIRTZ: I'm an independent pork
22 producer, and I'm -- Todd Wiley happened to make
23 mention of those of us that try and negotiate pigs
24 and try and set the marketplace. I'm one of the
25 people that are selling 5 percent of the hogs in

1 this country that is trying to set the price.

2 It gets extremely difficult at times;
3 in fact, almost to the point where you want to give
4 up and join the ranks of others. We're courted a
5 number of times to sign shackle space agreements
6 with packers, and we try and resist doing that for
7 the pure point that we believe that market
8 transparency and market discovery is ultimately
9 important for a free market to flourish.

10 We have always been, in this
11 marketplace, price-takers. We have never been able
12 to be price-makers, and quite honestly, I don't
13 have -- I think the power has even shifted out of
14 the packers' hands. Some people want to try and
15 take aim at the packers, but the retail sector, in
16 my opinion, has become so strong that when I talk
17 to them, when I sit in circles, sit around tables
18 and visit with them about challenges that they face
19 in their industry, they pretty much echo the
20 sentiment that we have felt for years in that
21 they're starting to be told "This is what we'll pay
22 for this particular cut of meat. If you want to
23 sell it to us, fine, and if you don't, that's fine
24 too."

25 And so I think the U.S. consumer needs

1 to understand that it's a very difficult situation
2 out here continuing to try and produce food not
3 only for the people in this country but for people
4 around the world. It's challenging.

5 PHIL WEISER: John, what's your
6 perspective on the market structure and where the
7 competitive concerns are?

8 JOHN LAWRENCE: Well, I think as both
9 previous speakers said, there's concerns kind of
10 both ends. I think one of the things as you
11 mentioned as you started the discussion on the
12 farm, the wholesale spread has widened over time.
13 I think a part of that is we track prices, and we
14 don't necessarily track costs. There's research
15 that does that.

16 But part of it is we're buying a
17 different product than we did a few years ago.
18 There's more further processing, more convenience,
19 more packaging, more advertising, and so on that
20 comes out of those margins.

21 Certainly in the hog side, as Chuck
22 just said, with the small number in the spot
23 market, I think that's a genuine concern. Where is
24 price discovery going to occur? What are the
25 functions of price discovery? What do we need it

1 to do? Is it possible to go further downstream for
2 that price discovery? Is it possible to have other
3 types of price discovery?

4 And I think those are questions that
5 the industry is needing to wrestle with in some
6 regards, whether it be the convenience or, as Chuck
7 said, the people who want to join the contracting,
8 its success is going to kill it because many that
9 were so successfully using somebody else
10 discovering price to use in my formula, now there's
11 nobody left to discover price, and so I think
12 that's a challenge.

13 PHIL WEISER: I'm going to come back
14 to this question with Mary. Before I do, Rachel, I
15 know you've thought about this margins you see that
16 people talked about. Any thoughts you want to
17 share on that topic?

18 RACHEL GOODHUE: Sure, and I'll go
19 back to what John said. You see me checking
20 something off here on my list. And in terms of
21 thinking about margins, as John said, it doesn't
22 talk about the other costs. And I was thinking
23 about out in California talking to some lettuce
24 grower/shippers, and what these folks have done,
25 is they've integrated up the chain. Instead of

1 building an ethanol plant, they started -- they
2 built a bag salad plant, have a lot of specialty
3 products.

4 They are still negotiating with
5 retailers. They still have this issue mentioned
6 by Chuck of having people tell them what price they
7 are willing to pay.

8 And then the other thing that's
9 happening is they have more value added, but
10 there's also a more stable market for them. The
11 price of their product isn't nearly as highly
12 correlated with the price of bulk lettuce,
13 commodity lettuce, as you think it would be, and
14 it's because of those other costs.

15 So you see this more stable price for
16 them, a more stable retail price for bag lettuce,
17 but it's being driven in part because that
18 commodity lettuce is a less important share of
19 their product.

20 So when we look at those margins, it's
21 not just who's capturing them but it's also about
22 is it an input cost, or is it about some sort of
23 market power?

24 PHIL WEISER: Brian?

25 BRIAN BUHR: Thank you. Thanks for

1 being -- it's a pleasure to be here today. I always
2 like being the fifth one. There's little left to
3 say.

4 I think the important part of this,
5 though, it's interesting how today listening to
6 this, I think all of you -- you go from one end of
7 the table to the other and the difference in
8 perspectives that happen for the same thing. It's
9 like the blind man is trying to tell if it's an
10 elephant or not. People feel different things.

11 But I think in this case it's
12 important to keep in mind that these business
13 organizations and market structures are a spectrum
14 of alternatives, so John was talking about open
15 markets and how important those are. I didn't
16 share his views on where he thinks those issues of
17 competition there and another person saying that
18 clearly these margin issues show there's a lack of
19 competition in markets, and that's kind of where
20 economists are at this. There's a spectrum of
21 competition here from open markets to complete
22 vertical integration and monopoly that we're
23 concerned about.

24 But in that context, I guess it's kind
25 of a challenge to think about is that competition

1 is not only about that open market that we fixate
2 on, but if you look at contracts, you look at
3 vertical integration, you look at emergence of
4 local foods, organic foods, and so on, all of those
5 in an economists' view are responses to
6 competition. They promote competition in markets.
7 They develop new products, and they come out of
8 trying to find ways to move through the market.

9 So we have had concerns about pricing
10 at farm levels. We've had concerns about pricing at
11 wholesale levels. Retail certainly is there. For
12 the most part the research on that is fairly
13 suggestive that there is some sign of market
14 pressure but that it's not enough to offset the
15 competitive advantages of scale and integration and
16 the types of innovations.

17 You know, the other challenge to think
18 about in business processes is as an innovation
19 process in itself. So maybe jumping ahead to some
20 of your questions, but from a policy perspective,
21 limiting business organization structures and
22 limiting those opportunities is sort of a
23 suppression of innovation in the sense of how is
24 the market structure organizes. So to think
25 broadly about those issues and the importance

1 becomes really defining is there an issue of
2 competition, which is the difficult question.

3 PHIL WEISER: So two things. One is I
4 encourage all the speakers to speak into the
5 microphones so folks in the back can hear. That's
6 the first thing.

7 The second thing is just to ask a
8 question that is notable. It underscores the
9 iterative nature of this process. So at the last
10 event in Washington, this issue, which is one of
11 the big issues on people's minds, is one we will
12 have to grapple with more intensely. Call it the
13 wholesale/retail differential or whatever. From
14 farm gate to retail, I think, is what Patrick
15 called it.

16 Here's the question, and I encourage
17 everyone here and everyone who's watching and going
18 to follow later: commodity prices for farmers go up
19 and down, but retail prices tend to stay higher
20 once they go up -- the consumer and the farmer both
21 lose -- where is this margin all going?

22 We've had some discussion on this
23 point. For others who have experience research,
24 please share with us so we can help grapple with
25 this question.

1 Let me go to another point that was
2 raised inherent and let Mary start on this, which
3 is the nature of the contracting. So one form of
4 the market structure that has evolved over time is
5 having more spot market-driven price discovery to a
6 greater reliance on forward contracting with more
7 limited spot markets.

8 I think the statistics offered by Todd
9 Wiley earlier was that there's only 5 to 6 percent
10 of hog sales are driven by spot market with a lot
11 of contracts that are going to be pegged with an
12 open term.

13 And I guess, Mary, I'd ask you, having
14 sort of thought some about this dynamic is whether
15 it's effective or whether there are concerns that
16 you want to raise with respect to it.

17 MARY HENDRICKSON: Well, I have to say
18 that I'm no expert on price, and I'm sitting here
19 around a bunch of economists as a sociologist, so
20 I'm not going to address the price issue because
21 that's not something I'm going to model and think
22 about the price.

23 I think the important thing about
24 contracts and the way that we've seen consolidation
25 happen is that there are other issues, and there's

1 other social/community/environmental issues that
2 are really important in this, and at the farm
3 level, I think one of the big issues is impacts on
4 choice and autonomy, and we've heard some of those
5 discussions today, but as you start to think about
6 what happens with contracting, there becomes --
7 there's a lot more specifications, particularly as
8 you move from marketing contracts into production
9 contracts about, you know, what can be grown, how
10 can it be grown, what kinds of -- in the livestock
11 arena, what kinds of medicine and veterinary health
12 can be given to it.

13 And so really, you're moving decision-
14 making away from the farmer and into the hands of
15 absent management, and as you do that, that is also
16 a way to move profit away from the farmer and into
17 the hands of other people who control the
18 contracts.

19 And so I think that that's really
20 important in terms of thinking about choices and
21 autonomy and just that natural idea that farmers
22 are really interested, I believe, having grown up
23 on a farm and hearing the farmers talk today -- are
24 very interested in thinking through themselves how
25 they want to care for animals, what kinds of crops

1 they want to plant, how they want to manage their
2 soil and manage their water and all these kinds of
3 different things, and I think that's the question
4 we start to face as we see this consolidated market
5 happening.

6 And so I don't really want to -- for
7 me it's not so much a question of price even though
8 I think in jurisprudence you have to -- you know,
9 it's been kind of defined down to that, that
10 question, but I think that there are these other
11 questions that are at play.

12 And the other thing I want to say too
13 from our work on this, you know, there are quite a
14 bit of stories about packers in particular talking
15 about consolidating to be large enough to provide the
16 protein counter, for instance, for large retailers.

17 And so that is actually given as a
18 reason to consolidate, and so the retail sector
19 does seem -- I mean we didn't have a national
20 retail sector, right, for a long, long time, and
21 we've got one now at the national level, and we're
22 now forming global retail sectors.

23 So the question is as we patent -- if
24 a national retail sector starts to force
25 consolidation, what will happen as we get to a

1 global retail sector, and what does that mean for
2 any kind of smaller independent players anywhere
3 along the chain, be it farmers or small processors
4 or small retailers? And I think that there are a
5 number of questions about that in terms of how the
6 food chain is organized.

7 PHIL WEISER: Chuck, I want to turn to
8 you. Eddie Wise said, which Mary has echoed, and
9 I'd like you to maybe explain, if you could, if it
10 is indeed what you were suggesting, if you do sign
11 these contracts, his word is you're dead. What's
12 that sentiment? Is that what Mary is saying? Your
13 autonomy is limited?

14 Why is there such a concern about
15 these contracts? Obviously a lot of people have
16 done it. Could you give a little more explanation
17 on -- from the farmer perspective how these
18 contracts are viewed?

19 CHUCK WIRTZ: Well, my -- I try and
20 negotiate my pigs, and my typical day starts out, I
21 will -- I happen to have the luxury of living in
22 north central Iowa, so I have -- from a livestock
23 pork producer, I happen to have the luxury of
24 having access to almost every large packer that
25 there is. So it's a little bit easier for me to

1 negotiate a price than it is maybe someone who only
2 has one or two major packers in their backyard.

3 But my typical day starts out, I will
4 make the rounds, and I always tell the packer I'm
5 making the rounds, and I will call up to six
6 different packers. And the question I will ask
7 them is if they need any pigs.

8 As an example today, I called them up
9 and said "Are you going -- I'm trying to negotiate
10 pigs for next week. Do you need any pigs next
11 week?" Well, when you call six packers and you're
12 to the fourth one and no one needs any pigs, you
13 start to get a little nervous that you might not be
14 able to get your pigs sold.

15 And you're in such a time-sensitive
16 system. As Todd Wiley said, you know, you have
17 pigs. I've got pigs coming on Monday, and I have
18 to empty a barn, and so you're struggling to try
19 and figure out, oh my God, where am I going to
20 move these pigs?

21 So that's the reason you would sign
22 those contract shackles space agreements because
23 they always afford you an opportunity to sell your
24 pigs because if I call one particular packer -- and
25 I won't name who it is -- their comment to me, the

1 buyer's comment is, you know, "We're 94 percent
2 bought."

3 I said "So what? You're 94 percent
4 bought for June. You have enough committed pigs on
5 shackle space agreements that 94 percent bought
6 does not scare me." 100 percent bought scares me
7 because now I can't sell pigs.

8 So it becomes very nerve-racking when
9 I'm trying to negotiate pigs that I'm the only one
10 out there trying to do it, and that's facetious
11 because I'm not the only one, but I'm one of the
12 few that's trying to do it, and I'm going to
13 influence the market of probably 50 percent of the
14 hogs that are out there that are on shackle space
15 agreements but are on pricing formulas that are
16 driven off of what I negotiate.

17 Now, when the DOJ called me, they said
18 "Well, couldn't you actually have access to inside
19 information?" And that's true. There's market
20 reports that come out, and we talked about market
21 transparency. I think it's very, very important
22 that there be accurate information available to the
23 marketplace so that we understand what the market
24 is.

25 So at -- in the morning at about

1 11 o'clock, there's a morning report that comes
2 out, and I'm always looking at that to see what is
3 being offered, and at 3 o'clock another report
4 comes out, and you're trying to figure out what's
5 being offered. And there's cutoffs for those time
6 periods, and packers will oftentimes bring you a
7 bid at 9:31 because 9:30 is the cutoff. And so if
8 they're going to bring you a higher bid, they bring
9 it to you at 9:31 because then it won't make the
10 morning report.

11 Or if they're going to sell you
12 something -- buy something from you in the
13 afternoon, they'll come at 1:31 because 1:30 is the
14 cutoff for the afternoon report. Or in most cases
15 recently, most of the negotiated pigs have happened
16 in the live market because most of the contracts
17 that are shackle space agreements that are signed
18 with packers are available and are driven off of
19 what we call the western corn belt, which is a
20 lean-based market, and so the live market doesn't
21 influence that.

22 So when they need pigs, they know how
23 to buy them so as not to influence the cost of all
24 their pigs. Now, is that bad? It's legal. They
25 can do it. What I do, I'd probably do the same

1 thing if somebody made the rules that way.

2 But it is -- it is a challenge. I
3 mean we're all human, and the tendency will be to
4 game the system and work the system to your
5 advantage.

6 PHIL WEISER: John, Chuck touched on a
7 number of aspects of the dynamics of how prices are
8 set and how these contract relations work. Do you
9 have a concern on this transparency issue, or how
10 would you suggest we think about it?

11 JOHN LAWRENCE: Well, the
12 transparency, the mandatory price reporting was
13 mentioned this morning, and it's -- it has been a
14 significant change, I think, in the way the hog
15 market is priced. Pork is not included in the
16 mandatory price reporting at this time. There is
17 the data available, but as Chuck said, there are
18 rules there. It comes out -- has to be in by 9:30.
19 It gets reported at some point after that.

20 Previous to that, there were people
21 that knew the phone number of the market reporter
22 that was collecting the information over the phone,
23 and so, for example, they would call. This would be
24 a farmer who would call Des Moines's office, find
25 out what that individual was hearing. Well, the

1 individual was not hearing anything because the
2 data is transferred electronically in at a certain
3 time, and so there's been some changes.

4 So yes, there's transparency in that
5 the prices are all reported according to the law, and
6 they get passed out at certain times, but you don't
7 see a lot of the formation. And I don't know if
8 Chuck does this. I know on the cattle side there
9 are -- private sector, there are clubs that they
10 join that they get messages to their text -- their
11 phone as soon as a trade occurs, so packer, you
12 know, offers me a bid at 10:30. At 10:31 it's
13 punched into the phone, and it gets sent to
14 everybody who's in the system.

15 And so they found that the public
16 sector is not providing them enough information
17 through -- to make the kind of decisions that you
18 need to make. They want to hear it from other
19 people.

20 PHIL WEISER: Brian, you studied this
21 closely as well. Do you have some thoughts you want to
22 share on this?

23 BRIAN BUHR: Well, I think I agree
24 pretty much. The transparency is that given in markets,
25 that ability to be able to make decisions based off

1 reasonable prices.

2 My concern, I guess the concern I'll
3 voice, is usually transparency comes on to me let's
4 have a policy about a requirement for 25 or
5 30 percent of hogs or in the open market or
6 something like that. And that creates a dilemma
7 for, you know, is that reducing producers' options
8 who are choosing to take contracts or purchase
9 versus negotiated prices the same way? So
10 transparency is sort of that, you know, you can
11 either regulate these markets or you can look at
12 how do we facilitate that transparency, and John's
13 example is a good example.

14 With Web-based systems, you know,
15 text messaging and so on, the information system
16 dimension of this, I think, is a huge part of
17 market formation that's just starting to get in
18 place in agriculture. And it's one of those
19 elements again where, I mean, I'm cautious
20 about policy and regulation issues in this. That
21 the market finds a way, that there are ways to get
22 that information out there. That information is
23 important for decisions, and we ought to focus
24 carefully on trying to achieve that point where we
25 make that open market as efficient as possible, as

1 transparent as possible, so that it becomes a
2 choice that makes those decisions that packers and
3 producers want to make to achieve profitability to
4 be able to make those decisions, whichever way that
5 goes.

6 And so, you know, it's kind of that
7 free market. Somebody mentioned the Chicago economy
8 before, kind of the open market version. The part
9 they miss usually is that there is a need for -- open
10 markets do fail, and you need to have mechanisms to
11 try to correct those, and a lot of it is transparency,
12 information flow, is exchange of information is
13 absolutely critical to that, and that information
14 includes -- one other important point here, I think,
15 is quality information, that a lot of what drives
16 incentives for contracts is the quality and the timing
17 issues and shackle space.

18 An open market price is hard over the
19 phone to say "I've got hogs that are 51, 52 percent
20 lean," you know, such and such down to the grade of
21 that hog and convince that packer that's what they
22 are, and so you start to contract.

23 We have the mechanisms now to trace
24 animals, traceability protocols and so on, identify
25 genetics, pass that through the supply chain, and

1 let the open market work better. And I think
2 that's a place where policywise we really ought to
3 look at how do we facilitate that information
4 structure rather than regulating that information
5 structure, so really facilitation rather than
6 regulation becoming part of that.

7 PHIL WEISER: John?

8 JOHN LAWRENCE: Phil, just to
9 follow up on one thing I don't want lost here, and
10 that was what Chuck went through as starting his
11 day and calling six people and sorting this out.
12 How much time does that take, and is that a daily
13 event, or is that once a week or once a month when
14 you have hogs to sell?

15 CHUCK WIRTZ: It takes a long time.
16 In fact, my wife wonders why it takes me so long to
17 do chores in the morning, and I tell her, well,
18 it's because I spent two hours in the hog building,
19 and one hour was on the phone trying to deal with
20 packers.

21 But you kind of get -- it doesn't have
22 to be a real long conversation with packers. You
23 can pretty much run through, and they'll tell you
24 whether they're sitting pretty good for next week.
25 They really don't need anything or they'll say "I

1 got to wait until Thursday because Thursday at noon
2 all my committed suppliers turn in what they have
3 for loads, and then I'll kind of know if I have a
4 need or I don't have a need."

5 So you wait until Thursday noon, and
6 then you call in. I think the -- I always worry.
7 I don't ever raise cattle, but I always hear about
8 the show list, and then I always hear about cattle
9 being traded in about a 30-minute time window on
10 Friday afternoon, and I'm always worried if the hog
11 industry ever gets to that point, I'm going to be
12 toast because my barns are so time-sensitive that
13 if I miss the boat and don't get my pigs sold, I'm
14 not exactly sure what I'm going to do.

15 JOHN LAWRENCE: And I guess my point
16 is is one of the reasons I think people have gone to
17 contracting is a convenience issue because that's a
18 lot of work and particularly if you're studying the
19 markets and the time.

20 CHUCK WIRTZ: It is. It is, but my
21 encouragement to all producers and specifically as
22 producers get larger is I'm not asking them to
23 negotiate all the pigs. I'm just saying for God
24 sakes, take one load a week and negotiate it
25 because if all of us would just do a little bit, if

1 all of us would recognize the importance of
2 negotiating the market and everybody would do a
3 little bit, it wouldn't depend on all of us to do
4 all of it.

5 PHIL WEISER: So I want to go to
6 Patrick and Rachel in a second, but I would want to
7 note that a lot of discussion about the role of
8 public policies, there are three concepts that have
9 highfalutin economic jargon, but they've been
10 nicely illustrated.

11 One is concerns about information
12 asymmetry and how to facilitate information that
13 can enable people to make decisions better. That's
14 true for end consumers and for producers. Second,
15 the prior panel talked a lot about what gets called
16 public goods. And intellectual property protection
17 is one response to this concern. So is funding of
18 research, which is something that was called for in
19 the prior panel.

20 And then also I think this point about
21 a market failure being able to stay in the market.
22 One thing that the Secretary mentioned that's quite
23 interesting is getting broadband to all rural
24 producers so they can participate effectively in
25 the ecosystem, I thought, was an important point.

1 Let me go to Patrick and Rachel on the
2 following points worth noting. The level of
3 contracting differs in different commodities
4 between poultry, hogs, and cattle. Is there
5 anything you learned from that comparison that bears
6 on this
7 discussion, Patrick, you might be able to share?

8 PATRICK WOODALL: Well, I think the
9 kind of question that producers ask is the surety
10 of being able to market their goods through a
11 contract and may make up for the kind of price
12 volatility. That is, producers make a trade-off.
13 They get -- what they get from a contract is they
14 eliminate some price risk, and they eliminate some
15 marketing risk.

16 But I think what's underdiscussed is
17 that in exchange, they pick up a giant amount of
18 contract risk, and this contract risk is in many
19 fold. Mary talked about some of these things, but
20 I think generally one of the things that's not
21 talked about enough is this investment risk, right?
22 Because producers, especially in the hog and
23 broiler industry, have to invest between half a
24 million or a million dollars into a facility to
25 produce livestock at spec to send to the packer.

1 This is a burden that is placed on the
2 grower/producer, but yet the liability is not on
3 the buyer at all, and this is a significant
4 overhang, a debt overhang on farmers, that is tied
5 to a contract. This becomes especially perilous
6 when integrators or packers fail.

7 Now, this year a whole bunch of hog --
8 pork processors failed in the Southeast, and
9 Pilgrims Pride has been under bankruptcy, and many,
10 many growers and producers that have this overhang
11 of debt that was required upon them for their
12 contracts, 60 percent of hog producers that are
13 under contract are required to make giant capital
14 investments just to secure their contract. Either
15 through upgrades on their new buildings. This risk
16 on the debt side combined with the risk of contractor
17 failure presents a significant risk to producers
18 that I think is downplayed on the efficiency and
19 benefits and convenience of marketing at a
20 consistent price.

21 I think this kind of balance is not
22 really discussed hardly at all in real terms for
23 producers because it is a significant risk, and
24 that's on top of the risk of the liability, the
25 environmental liability for dealing with manure

1 management and then the other risks that producers
2 might have.

3 I mean I think the real understanding,
4 when you think about what's going on in the broiler
5 industry, 99 percent of birds are produced under
6 contract. It's virtually 100 percent integrated.
7 Growers don't own the birds. They just produce the
8 birds on to service, but the reality is that
9 50 percent of poultry producers only have one or
10 two integrators that serve them, so there's really
11 no market at all, and more -- about 60 percent of
12 them don't -- feel they have no alternative to the
13 integrator they're dealing with now.

14 So this contractor risk can lock
15 producers in, and they can lock them into some very
16 significant cost problems, both on the debt side,
17 on the contractor failure side, and on the
18 liability side, and many of them have nowhere else
19 to go.

20 So there is a difficulty with the
21 negotiated price marketing, and it's a real
22 difficulty, but the reality is on the hog sector,
23 you're talking about 10 percent of the trades that
24 are on the open market, and they are influencing
25 the prices on the formula side that could be half

1 or more of the marketplace, so that also creates
2 some kind of situations where a tiny number of
3 buyers on the spot market can really manipulate a
4 thin market like hogs pretty easily here actually,
5 so we're concerned about all of these things.

6 The contract risk is significant. It
7 needs to be talked about in alignment with this
8 overall benefit of the contract.

9 PHIL WEISER: You want to jump back in
10 on that, Mary?

11 MARY HENDRICKSON: Yeah. I just
12 wanted to say that I think one of the big things
13 about contracts is that as Patrick was mentioning,
14 if you have options on where you want to contract,
15 and Bill Heffernan has done some studies in Union
16 Parish, Louisiana, over 30 years, and as options
17 from integrators went down from four in 1969 to two
18 in 1981 and then one in 1999, farmers were much less
19 satisfied with the contracts, felt much more locked
20 into arrangements that they didn't really want to
21 choose, and felt like they had no power in
22 negotiating the contract.

23 So I think it's really important -- I
24 mean contracts in and of themselves can be really
25 wonderful things for reducing risk but only if

1 there is a -- there's no power asymmetry there.
2 You've got to have equal -- some sort of equal
3 positions of power to negotiate a good contract,
4 and that has to do with if you have options, where
5 you're going to sell things and where is your
6 market.

7 And you know, we've seen this in the
8 poultry industry, to some extent in the hog
9 industry, I think. It's, you know, that there just
10 aren't -- if you have a poultry plant one place,
11 there's a circle around there, and that's the only
12 place you can get a contract. And we're starting
13 to see that a little bit in hogs, maybe not as
14 much, but that's what's happened in poultry, and I
15 think that that's a serious concern a lot of people
16 have about contracts.

17 PHIL WEISER: Rachel, you want to add
18 anything to this?

19 RACHEL GOODHUE: Sure. A couple of
20 things here. I guess the first thing I will do is
21 speak directly to Mary and Patrick for a moment.
22 And in terms of contract choice and so on, I will
23 come back to one of our earlier speakers previously
24 who pointed out that he chose a contract, and
25 certainly a contract is a question of what you get

1 out of it, and I think to some extent what you're
2 both talking about is there can be a big difference
3 in negotiating power when you initially enter the
4 contract whereas what happens five years later, ten
5 years later when the initial contract is up, and I
6 just kind of wanted to draw that out.

7 Then the next thing I would say about
8 this is two more comments. One about as the number
9 of integrators goes down, and what I was thinking
10 about is the California sugar beet industry, or
11 maybe I should say the former California sugar beet
12 industry, and it's true that we lost all the
13 processors, but that's because they weren't making
14 any money either, and so it's always a question of
15 watching in a specific area if it's something about
16 long-term trend in the industry versus decisions
17 made by individual processors for their own
18 reasons.

19 And then the other thing which is a
20 bigger thought question for folks in the audience
21 really, and some people may be on contracts that
22 are like this, but I was just thinking about
23 there's a lot of ways to peg price that don't
24 involve spot price.

25 If you think about broilers, all the

1 chickens are contracted or owned by the processors,
2 so the question is, how do they set that contract
3 price? They've got a different mechanism. And so
4 maybe one thing we might be seeing -- whether we
5 want to see it or not, of course, depends on the
6 specific contract terms but price determination
7 mechanisms that are based on something other than a
8 spot price that's perhaps increasingly
9 unrepresentative of the price that producers and the
10 industry as a whole are obtaining.

11 So that's -- that might be something
12 to think about for the future. If the spot market
13 is unreliable, if there's not enough of a market
14 for the transparency to be effective, then maybe
15 other mechanisms need to be explored.

16 PHIL WEISER: So I just want to
17 underscore sort of in the call for further
18 information and thoughts. Rachel's two great
19 points, the first one involving what you might call
20 the renewal contract situation and how to avoid what
21 the comments called ex-post, after-the-fact,
22 opportunism. Once someone is locked into a
23 particular purchaser, how do you ensure that they
24 are not taken full advantage of? If you maybe had
25 the right arrangement at the front end of the

1 contract that gave you some protection, that could
2 help.

3 Other industries -- electric power
4 comes to mind -- has regulations that deal with
5 these sorts of situations.

6 The other point you made about other
7 price setting other than relying on spot market.
8 For those who have experienced knowledge as to
9 those sorts of case studies, we really welcome
10 them. That's valuable information for us.

11 Let me ask a question that came up to
12 Chuck, and you can maybe respond. Others can
13 respond. The feeling of a lack of power by
14 producers begs the question: are there cooperatives
15 that provide a mechanism to enable producers to
16 come together as a way of essentially
17 countervailing market power that can ensure a fair
18 price for sellers?

19 The Congress has passed a law --
20 people here are probably well familiar with it -- the
21 Capper-Volstead Act which provides an important and
22 constructive role for cooperatives in the chain
23 that we've been talking about.

24 Is that a part of this picture, Chuck,
25 that you've thought about? Does it work in your

1 sector? I know other sectors may be more or less
2 susceptible to cooperatives playing a role than
3 others.

4 CHUCK WIRTZ: There are. There's a
5 marketing organization called Producers Livestock
6 Marketing Association out of -- I believe it's
7 Sioux City. They work with smaller producers
8 trying to help them market their hogs.

9 For the most part, if you can deliver
10 a semi load of pigs, you can negotiate pigs
11 because you pretty much have the ability to deliver
12 a scale of pigs that a packer is willing to
13 negotiate with.

14 I will tell you, though, that it is --
15 it is true that the more loads you have to
16 negotiate, the more willing they are to negotiate.
17 I've had instances where I've offered two loads at
18 a price or four loads at a higher price, and
19 they'll take the four loads at a higher price
20 versus if you didn't have the four loads you wouldn't
21 have got the higher price, so there is some of that
22 going on.

23 PHIL WEISER: That's the case for
24 cooperatives, in other words.

25 CHUCK WIRTZ: Right.

1 PHIL WEISER: If you can aggregate the
2 amount that you're selling.

3 CHUCK WIRTZ: You can negotiate those.
4 The problem is, though, it's like I had a
5 conversation with one of the buyers there this
6 morning. Right now it's extremely difficult to
7 market pigs because we had a fire at Logansport,
8 Indiana, and there's such a delicate balance
9 between supply and demand of hogs that that plant
10 being down, every day that it's down, those pigs
11 have to be killed somewhere else.

12 So there's a push of those pigs to the
13 west, and currently, we're having to deliver pigs
14 from north central Iowa to Crete, Nebraska, to try
15 and find -- we have to go west -- to find a packer
16 that will kill our pigs because going east is
17 getting inundated with these pigs coming from the
18 east because of that slaughterhouse, so it is a very
19 delicate balance.

20 PHIL WEISER: Rachel, you want to jump
21 in on that point?

22 RACHEL GOODHUE: I did because again,
23 California has some instances of different cases
24 like that as well in wine grapes, and this is an
25 interesting case not just because of the product, but

1 because the industry is very differentiated, but
2 there's a producers' negotiating group called
3 Allied Wine Grape Growers, and it will come in and
4 help members negotiate for their grapes, and more
5 importantly, given some of the things we talked
6 about with contract risk earlier, they insure.
7 They insure each other as a group.

8 So if your buyer goes broke and you
9 don't get your payments, then everybody has
10 contributed into a pool so that you don't realize
11 zero return on that year's crop.

12 And another interesting case is
13 processing tomatoes. There's no real spot market
14 there. This is one of the industries that
15 motivated my earlier comment, and what we have
16 instead is an industry producer negotiation group,
17 the California Tomato Growers Association, and they
18 negotiate with the processors. Now, these are
19 contract prices, but it's a very transparent
20 negotiation process in terms of how the prices are
21 settled and what the processors are paying for base
22 price.

23 PHIL WEISER: So I want to go to
24 another question that emerges from what Chuck just
25 said, which is the amount of distance you have to

1 ship because of the changing market structure. For
2 some people -- and in Colorado we'll have a local
3 producer of cattle who's related such a story --
4 it's maddening that they can actually produce
5 cattle, let's say in this case in Colorado Springs.
6 They want to ship it to Whole Foods, say, or other
7 outlets that might be in Denver or Boulder, but in
8 order to do that, they've got to ship their cattle
9 down to Texas where the, you know, distribution
10 facility is.

11 And so that makes it a lot harder to
12 have locally grown food, and it also makes it
13 harder for people when they're buying food to know
14 what truly is local. So we've referred to it
15 before, and people have raised this issue about
16 consumer awareness, and I think I heard Secretary
17 Vilsack say that there's a real push to know your
18 food, know your farmer.

19 To what extent is there local
20 awareness about where their food is coming from?
21 Is it an advantage to be local? Do those markets
22 exist? I think, Mary, said you want to start on
23 that one?

24 MARY HENDRICKSON: Yeah. Thank you.
25 I think one of the issues you just raised about

1 Colorado Springs to Texas is one of, again, Whole
2 Foods is a very dominant player in the natural
3 grocery sector, right? So there's very little
4 competition in some sense with Whole Foods.

5 So what happened is we see these more
6 national scale players create more national scale
7 infrastructure, and so we have eliminated a lot of
8 the infrastructure that used to exist for local --
9 either it's processing facilities; it is local
10 warehousing; it's packing and sorting facilities,
11 all of these kinds of things that that infrastructure
12 no longer exists.

13 And you know, the argument is, how
14 come it disappeared? Just simply because it was
15 inefficient, or are there other reasons? And I
16 think that's something to tease out. But that
17 makes it very, very difficult as we start to see
18 these local markets.

19 So there's a very vibrant market, for
20 instance, in farmer's markets. What have we got?
21 Somewhere over 5,000 farmer's markets across the
22 country. They're very competitive normally. The
23 producers there are -- it's a very competitive
24 market. Farmers really have to be on the top of
25 their game to do it. They're providing a lot of

1 information to consumers and so on.

2 But once you move out of that
3 particular direct relationship between farmer and
4 consumer, then the infrastructure issues become
5 really, really important. And it's particularly
6 difficult for meat vendors of any sort at the local
7 level because of the costs. A local farmer at the
8 market in Columbia, Missouri, for instance, says
9 it's \$400 to slaughter his beef cattle at a
10 small -- very small scale but actually medium scale
11 for a USDA-inspected locker plant in Missouri
12 versus, you know, some of the industry averages
13 are, you know, probably closer to a quarter of
14 that.

15 And so that -- you know, part of that
16 is because rendering is consolidated, so nobody can
17 sell their by-products anymore. I mean there's a
18 lot of issues that all play into that.

19 So I think that those are some of the
20 issues that we have to start thinking about at the
21 local level, but that infrastructure, it becomes
22 really apparent too as we go to a global scale, a
23 lot of global players in the food system are at the
24 global scale where there was a global retail
25 sector. You know, there's a global trading sector

1 in grains, and so that raises the question of what
2 happens at the -- you know, if we've seen these
3 changes from local to national scale, what happens
4 when we go to global scale?

5 And finally I would say something that
6 doesn't have anything to do with price and
7 efficiency whatsoever but questions about
8 redundancy and resiliency in the food system, and
9 that's what I think a lot of folks in the local
10 arena, it's not just a matter of trying to
11 differentiate their price and -- or their products
12 and get into new markets because they're frustrated
13 with other markets or they see these as a marketing
14 opportunity, but there are some questions about
15 societal goods, about, you know, if we have
16 redundancy, that allows us to absorb more shocks.

17 You have a highly concentrated system.
18 It's much more difficult to absorb shocks, be they
19 financial shocks or environmental shocks or what
20 they are. So I think that redundancy and
21 resilience is another important thing to think
22 about in terms of local markets and what kind of
23 societal goods that they actually provide for
24 people.

25 PHIL WEISER: John, I want to segue

1 back to something that a couple farmers said on the
2 earlier panel, the role of, and the importance of niche
3 players or specialty offerings. Local food could
4 be in that category.

5 Broadly speaking, how significant do
6 you think this idea is of niche development, and is
7 local, sort of, food good example of that? How does
8 it overcome the obstacles that Mary has talked about
9 and what sorts, if any, policy responses are
10 appropriate?

11 JOHN LAWRENCE: Well, and I've often
12 used this quote, and I probably ought to look to
13 see if it's factual or not, but I think one of
14 Webster's definitions of niche is a small crevice
15 in an environment in which to hide.

16 Oftentimes that -- from a niche market
17 standpoint, that's what you're trying to do, is
18 find someplace so you don't have to compete on a
19 commodity scale, that you're doing something
20 unique, you somehow differentiate that product, and
21 whether it is by distance or how the animal is
22 produced or the genetics of it or whatever it is,
23 there's some distinguishing factor.

24 And then you have to have a market
25 infrastructure or system that allows you to prove

1 that differentiation because the flip side of it is
2 protecting the consumer. Alright? If suddenly
3 there's a huge increase in interest in natural --
4 and there's no strong definition of natural. By
5 golly, mine are natural too, pay me more money.
6 Then you get into consumer fraud issues. And so
7 how do you protect that?

8 I read, and this is maybe popular in
9 the trade industry, that local is the fastest
10 growing or the hottest item in restaurants this year.
11 But it's starting from a very small base, so back to
12 your question. Is this a significant outlet?

13 I think you will find some individuals
14 that can do very well. The Whole Foods and the
15 natural beef or cow, whatever specs they had
16 started out as a niche that some producers got
17 into, but as a business, I'm assuming here, how do
18 we get this national distribution? How do we do it
19 cost effectively? It's having centralized packing
20 plants and distribution systems, and so now
21 suddenly we're back into transportation logistics.

22 Our commodity systems, that's one of
23 the things they did very, very well is efficiency and
24 logistics. You can run into some of the same
25 pricing issues as you get into local and these

1 niche markets. Oftentimes they're based off of the
2 commodity price, so it's a premium to the
3 commodity.

4 Farmer's markets, they may be more of
5 a direct negotiation, but some of those same issues
6 will follow you into those niches.

7 PHIL WEISER: Patrick, if I recall
8 correctly, your comments talk a little bit about
9 the experience in the organic sector which was
10 developed off of certain regulations and what could
11 constitute organic.

12 What did we learn from that, and more
13 generally, what do you think of the promise of
14 niche development, niches?

15 PATRICK WOODALL: I think this
16 question really reflects the consolidation in the
17 marketplace. And I think as you saw the number of
18 cattle slaughter companies decline and the number
19 of facilities decline, this kind of creates a
20 barrier to entry. There's a classic consolidation
21 impact on the marketplace. It creates a barrier to
22 entry.

23 The capital cost of building a new
24 slaughter facility and the barrier of finding
25 supplies in a marketplace that's locked up by

1 captive supply agreements creates a real difficulty
2 and an impact and prevents -- effectively prevents
3 a lot of reconstruction of these local
4 marketplaces.

5 In organic, I think what we saw was
6 the promise of a niche market that grew very, very
7 quickly, and many small producers took advantage of
8 that. They were quickly swamped in many respects
9 by the giant food companies. Of the 30 biggest
10 food companies, a third bought up organic brands
11 within the first ten years, and half launched their
12 own organic brands.

13 And in organic milk producers, the
14 organic dairy farms thought that they could kind of
15 outrun the system, I think, for a long time and
16 made a premium, but when the milk prices collapsed
17 in 2007, the dairy milk prices came down faster and
18 harder, and suddenly there was a very consolidated
19 market where a very few buyers are buying organic
20 milk from dairy farms, and they were especially
21 squeezed and faced the dairy crisis harder and
22 earlier than I think other dairy farmers did, which
23 was quite terrible for all of them but earlier and
24 worse for organics.

25 PHIL WEISER: That note leads into my

1 last question which I'll go through the panel for a
2 minute or so. The question is twofold. One is, is
3 it a marketplace today where farmers can start up
4 and compete on the merits and have a shot to make
5 it? And to the extent there are barriers or
6 impediments, what are they, and what, if anything,
7 can policy do about that?

8 Brian, how do you size that up?

9 BRIAN BUHR: Well, we do know this
10 conversation about niche markets is part of that.
11 You know, it's from John's comment about the
12 crevices is kind of enlightening because the larger
13 commercial food chain which produces highly -- high
14 quality, cost-effective food that feeds the nine
15 billion people we've heard about is sort of that
16 piece that helps maintain that -- one producer
17 earlier talked about they're cost driven. It
18 maintains that cost-driven food system where you're
19 trying to provide that which opens up those
20 crevices. I mean it's literally that piece where
21 when people make a choice to go to local, organic,
22 or producers, those opportunities arise.

23 The ability to do that, I think one of
24 the biggest issues is capital, which came up
25 earlier which we haven't talked much about is

1 capital formation in these markets.

2 And to that extent competing on the
3 merits make up the ability to enter -- you know, the
4 barriers to entry issues, and the challenge today is
5 even for relatively modest farm operations with land
6 values what they are in Iowa now, 5, 6,000 bucks
7 you're at down here. We don't know that in Minnesota
8 yet.

9 But if you look at those types of
10 barriers to entry, it's just difficult to get in,
11 and the fact in agriculture is there are large
12 economies to scale. So one of the issues that did
13 come up earlier is, how do we finance agriculture?

14 And what's happening -- and we can
15 talk about integrators being part of that financial
16 model and of course, you know, linking with larger
17 production firms to gaining access to capital.
18 We look at the farm credit systems that exists to
19 provide access to capital. And all of those things
20 help foster competition without putting necessarily
21 market restrictions on. They're sort of
22 facilitating aspects of this.

23 So that capital size is really
24 important, and a piece of this that, I know, in
25 Iowa and other places, it's very controversial, but

1 you might as well say it is the only access to
2 capital in agriculture is primarily debt capital.
3 And no other industry in the country, folks, is
4 primarily on debt capital. There's very little
5 equity that can come into this industry from outside.

6 And we get upset because it goes to
7 the large producers and the large integrated
8 production companies, but for example, if you start
9 a small organic company and look at cooperatives as
10 an example of this, offering shares for people to
11 buy into community situations, you're providing
12 facilitation with capital in innovative ways,
13 micro-lending of those aspects. Are there ways to
14 create innovation into that market that does open
15 up these channels?

16 And rather than blaming the big person
17 for closing markets, we're not allowing the opening
18 of people to get into these markets in many cases.
19 So I keep saying facilitation, but I think that's
20 where we need to look at. How do we form those
21 necessary conditions to get capital in the markets?

22 PHIL WEISER: Rachel.

23 RACHEL GOODHUE: So certainly Brian
24 made a lot of key points here, so I will just throw
25 out a couple other things going back to John's

1 earlier comments about niche markets. Finding a
2 market and finding a market you can grow and keep
3 from scratch isn't easy whether you're starting a
4 farm, business, or you're trying to redirect the
5 one you have.

6 Certainly something like
7 community-supported agriculture where you get
8 customers to subscribe, this works in the produce
9 industry, apparently it can also work in meats on a
10 very small scale. That's one way of getting money
11 into your business.

12 At the same time where you're
13 cultivating a direct market, we had an earlier
14 comment about -- on an earlier panel about how much
15 of the small scale stuff can really work, and
16 that's a good question. By definition a niche is a
17 niche. I don't know how many little crevices folks
18 have to hide in in total.

19 The other thing that I will mention
20 certainly that hasn't come up in this panel or
21 actually that much except for the gentleman from
22 North Carolina earlier, which is certainly last
23 night when I got here, my dad and my friend were at
24 a pesticide training session, which I bet a lot of
25 other people went to too, and regulatory compliance

1 is a big cost.

2 California, I guess you could say
3 we're the leader or in last place, depending on how
4 you feel, in terms of regulation of agriculture,
5 and it's a huge concern. People spend a lot of
6 time on it, and people spend a lot of money on it,
7 and if you're starting from scratch, that's another
8 big challenge that certainly hasn't been discussed
9 a lot today, but it matters.

10 Mary mentioned about environmental
11 compliance. That's just one small piece of
12 regulation of agriculture.

13 MARY HENDRICKSON: If I could just
14 build on what Rachel was just saying, I think that
15 there are a couple of policy levers that aren't
16 working very well for small scale growers, and this
17 has to do with compliance issues around a
18 regulatory infrastructure does not work very well
19 for small scale. And often this regulatory
20 infrastructure is really built for the larger scale
21 that we've seen emerge in agriculture, and it
22 doesn't work very well for small scale.

23 And I would say this is particularly
24 true around food safety governance, and you know,
25 there's new rumblings about what's going to happen

1 with food safety regulations. We're already seeing
2 produce auctions in Missouri run primarily by, you
3 know, Amish/Mennonite farmers and other farmers who
4 these are real open auctions for produce.

5 We've seen those be impacted --
6 perhaps this summer there's some fear about it
7 because of good agriculture practices which is a
8 voluntary regulation which seems to be now
9 compulsory for a lot of produce growers, so the way
10 food safety governance happens, it's not very well
11 thought out, and food safety governance is not going
12 to be appropriate.

13 The same kind of things is not going
14 to be appropriate at all scales of production and
15 consumption, and I think it's really important to
16 think hard about how that happens so that we don't
17 end up with some of the same issues we've had in
18 terms of pesticide regulation or safety regulation
19 and so on. And this is not to say regulation isn't
20 useful and necessary. It's just to say that we have
21 to think about what are the appropriate scales and how
22 that works. And I think that's really important.

23 And the last thing I would say too is
24 that I think it's really important to think about
25 these larger goals of, I mean, we're talking about

1 issues of concern to farmers, but these are issues
2 of concern to larger society as well and how our
3 landscape looks, and I think somebody on an earlier
4 panel mentioned something about Iowa being kind of
5 known for corn. Basically driving through, all you
6 see is corn; when this was a cornucopia of a number
7 of different products, a number of different
8 landscapes, you know, just maybe 40 years ago, 40,
9 50 years ago. And so, you know, that has biological
10 diversity complications. That has implications for
11 wildlife, for water quality, for water quantity,
12 all of these kinds of things.

13 And I think that those things become
14 very important to the issues we're addressing in
15 consolidation and competition because those larger
16 societal goals that we can incur, that are tightly
17 linked to the industry structure.

18 JOHN LAWRENCE: I think the question
19 was in getting started, and I think it's always
20 been difficult to get started in agriculture. I
21 think back to when I was growing up and people I
22 knew that worked the night shift someplace but
23 farmed during the daytime. That continues today.

24 We talked about part-time farmers. To
25 me they've been farming full-time, and they've gone

1 back to a job, so I understand the difficulty.

2 The capital it takes -- and Brian
3 talked about this. We often talked about the way
4 you get capital is either you're born into it or
5 you marry into it. The interest is a little higher
6 on one of those than the other.

7 The other role that was mentioned
8 earlier is the role that contracts have played or
9 integrators have played in helping to secure some
10 of those loans. If I don't have a section of
11 Grandpa's land behind me but I have a contract, am
12 I able to access the loan?

13 The contract risk that was mentioned
14 is quite real. So they're going to investigate
15 what's the integrity or the stayability of the
16 company behind it?

17 But beyond conventional agriculture,
18 doing what we've done or what Dad did, we see a lot
19 of interest. We hear it. It's in the press a lot.
20 We have meetings, and there's a lot of interest.
21 It's featured in the newspapers. How many numbers it
22 actually is, I'm not sure. Of the smaller farmers,
23 whether it's the welfare-friendly pork like Neiman
24 Ranch has 400-plus growers and the welfare-friendly
25 situation that's much lower capital than conventional

1 production. Some of the farmer's markets are high
2 labor produce-type things, I think is providing some
3 opportunities that were maybe there 50 years ago,
4 weren't there 10 years ago, and are beginning to
5 evolve some today.

6 PHIL WEISER: Chuck, the question for
7 you is, would you encourage your kids to go into
8 this, and if there are impediments there, what are
9 they?

10 CHUCK WIRTZ: I wish -- I have two
11 boys in college, and I don't think either one of
12 them are going to come back to farm, and that's
13 unfortunate. I mean I knew when I was in high
14 school, that that's what I wanted to do when I wore
15 a blue coat. I knew I was not going to go to
16 college, and I was a good student. I got straight
17 A's in school, but I just knew I wanted to farm. I
18 lived, breathed, eat, sleep, drove on the tractor,
19 sat on the fender. I'm sure it wasn't safe, but I
20 never fell off and got ran over.

21 I mean, you know, it was just a
22 different world back then. And you grew up, it
23 was just a love affair with farming. You just
24 loved to do it. And it's challenging, and you
25 know, that's why I'm so passionate about trying to

1 preserve a marketplace, and I think as an industry,
2 as a pork industry, we recognize that we don't have
3 enough pigs being openly negotiated, and we're
4 going to try and address that. We get a little
5 concerned when the government is going to come in
6 and mandate that.

7 I have -- one of the first confinement
8 barns I built was built with a contract. I was
9 able to walk into the bank, and the bank would lend
10 me the money because of the strength of the
11 contract, and that enabled me to expand my hog
12 operation, to take it to the next level, so there's
13 a place for that.

14 But if we want to preserve the
15 marketplace, we have to preserve a negotiated --
16 you know, you talk about having price set on
17 something else, and different people have talked
18 about, well, let's set the price based on the
19 carcass cutout. Farmers don't operate in that
20 market. We don't negotiate it. We don't produce a
21 carcass. We produce a pig, so we have to have
22 price discovery in a live pig arena in order for us
23 to negotiate in that.

24 If we lose that market, I'll even have
25 a harder time convincing my sons to come back on

1 the farm. But I do have a seventh grader that
2 likes to ride the tractor with me and likes to be
3 out there, and he's my exit strategy.

4 PHIL WEISER: Patrick, you started the
5 discussion off, but do you want the last word,
6 anything else to add?

7 PATRICK WOODALL: I think that
8 question is the question that all farmers have
9 heard today asked, which is, is this something I
10 would recommend my kids do? And I think many of
11 them say that, in a very concentrated marketplace,
12 it's really difficult, and that's why USDA is so
13 interested in figuring out how to leverage more tools
14 for rural development because it's harder now, I
15 think, for farmers to make it in a marketplace where
16 there are very few buyers, and it's difficult to make
17 ends meet.

18 And that question that you see today,
19 and I think you'll see it at the end of the day is,
20 what is the role of consolidation and that question
21 on an intergenerational challenge for farming in
22 America, and that's important.

23 PHIL WEISER: We will take a break until
24 3:30. We'll hear from the enforcers and come back
25 from anyone else here who wants to be heard. Thank

1 you all for a great discussion.

2 (Short recess.)

3 MARK TOBEY: Alright. I think we're
4 going to get started now. If we could get your
5 attention, we're going to start the enforcers'
6 panel, and since we're enforcers, you'd better pay
7 attention.

8 Well, thank you all for coming today.
9 We have this last panel, the enforcers' panel,
10 which it is my pleasure to be the moderator of. My
11 name is Mark Tobey. I am the relatively new
12 agriculture counsel at the Department of Justice
13 Antitrust Division.

14 Actually, there are two pieces to my
15 job. One is state relations, and one is
16 agriculture, so with this panel of state attorneys
17 general and my federal counterparts who do
18 agriculture work, I mean it doesn't get any better
19 than that for me, and so we're very pleased today
20 to be able to talk about the enforcement landscape
21 in agriculture and antitrust and add into that
22 commodities regulation.

23 And we have today with us three
24 attorneys general that I'm very pleased to have
25 gotten to know a little bit. Two of these fine

1 gentlemen are part of the antitrust committee that
2 interfaces with the U.S. Department of Justice and
3 the Federal Trade Commission, and then General
4 Bullock from Montana has been very involved in the
5 agriculture aspects of the attorney general --
6 attorneys general's work.

7 So we have the Attorney General of
8 Montana, Steve Bullock, and we will go through one
9 by one -- this panel is a little bit different from
10 the ones that you just heard. This will be more of
11 a statement talking about work in the agriculture
12 and enforcement area. We'll go one by one through
13 the panel.

14 Then after everyone has made their
15 statements, we'll have a little bit of a
16 discussion, and then we will take questions in the
17 same manner in which we've done it before, which is
18 that please write your questions, and we'll have
19 the FFA volunteers come and get your questions, and
20 toward the end of the panel, we'll see -- I'll look
21 through them and see if there's anything that we
22 can address with this panel.

23 I'm going to say off the bat, because
24 maybe these folks would not want to say it, we're
25 all enforcers. We all have investigations or cases

1 that we can't talk about. That's one reason why we
2 have to do the presentations the way that we're
3 doing it. And I apologize in advance. Maybe some
4 of the questions will actually go to matters that
5 we can't talk about. It isn't that we're trying to
6 hide the ball. It's just that that is the way that
7 these investigations have to be conducted.

8 So let me start by introducing with
9 great pleasure Steve Bullock, the Attorney General
10 of Montana. Steve was elected as Montana's 20th
11 attorney general in November of 2008. His career
12 in public service began as chief counsel to the
13 Montana Secretary of State. He went on to serve
14 for four years with the Montana Department of
15 Justice, first as an Executive Assistant Attorney
16 General and then as the acting chief deputy in
17 Montana.

18 He also served as the attorney
19 general's legislative director from 2001 to 2004,
20 and he practiced law in Washington, D.C. at Steptoe
21 & Johnson, and he served as an adjunct professor at
22 my alma mater, George Washington University School
23 of Law.

24 Prior to his election in Montana, he
25 worked in private practice in Helena, and he was

1 born in Montana and graduated from high school in the
2 public schools in Montana and got his degree from
3 Claremont McKenna and his law degree from Columbia
4 Law School. So Steve.

5 ATTORNEY GENERAL STEVE BULLOCK:

6 Thanks, Mark. And on my -- behalf of myself and
7 the other panelists, I'd like to thank the
8 Department of Justice and USDA and their dedicated
9 staff for pulling this together today. I think
10 we've all learned a lot, and it wouldn't have been
11 possible without the hard work from folks like you,
12 Mark.

13 In 1999 I was an Assistant Attorney
14 General with the Montana Department of Justice, and
15 I had the opportunity to provide testimony to the
16 Senate Commerce Committee. At that time the
17 committee was grappling with the issues of how
18 mergers in the agriculture industry had affected
19 consumers.

20 The following year in Colorado, the
21 USDA convened a summit to discuss livestock and
22 grain issues. State and federal governmental
23 regulators came together to discuss the vexing
24 issues surrounding market concentration and its
25 impact on consumers and producers.

1 In many respects it's deja vu all over
2 again. Everything I testified about a decade ago --
3 highly concentrated markets, potential abuse of
4 market power, to harm both producers and consumers,
5 the need for greater market transparency, and a
6 plea for greater coordination effort in regulation
7 enforcement it's as true today, if not more so.

8 So on the one hand, I think that
9 there's reason for skepticism and indeed pessimism.
10 Yet fast-forwarding a decade plus later, there are
11 bright spots on the horizon. Within two months
12 from my coming into office last year, JBS National
13 called off its proposed merger. The merger
14 threatened to combine the world's largest beef
15 packer with the nation's fourth largest,
16 concentrating over 80 percent of the nation's
17 capacity in just three firms, threatening to
18 both reduce demand for ranchers and output for
19 consumers.

20 And when you think about it, it's
21 unlikely that their decision to walk away from that
22 proposed transaction was attributable just to a
23 change of heart. It was the result of the United
24 States Department of Justice and 16 states joining
25 hand-in-hand to stop it, having filed suit to block

1 that merger four months prior.

2 Another bright spot is the fact that
3 this workshop is even being held today. As I
4 mentioned earlier, certainly not the first time
5 that regulators have gathered together to learn
6 about and discuss these concerns, but I imagine it
7 is the first time that the United States Attorney
8 General and the United States Secretary of
9 Agriculture and this many AGs and others have come
10 together.

11 And that's as it should be because
12 it's not just about a rural way of life or clinging
13 to some nostalgic past. It's just practical. It's
14 about ensuring the competitiveness of agricultural
15 markets for all of our states. America's rural and
16 urban economies absolutely depend on each other.
17 The rural economy has often been the barometer of
18 the nation's economy as a whole, and when rural
19 America is suffering, we can expect the nation's
20 economy to suffer as well.

21 Agriculture ranks as one of the top
22 sectors in most of our state economies. And while
23 the agriculture heritage of all of our states
24 differs, sometimes dramatically, the concerns about
25 market concentrations, transparency, and effective

1 regulation, they cross geographical boundaries and
2 they're shared concerns irrespective of the crops we
3 produce and the animals that we raise.

4 For example, in Montana we don't have
5 the significant corn, soybean, or hog production
6 that you find in the Midwest and here in Iowa, but
7 agriculture is still my state's largest industry.
8 In Montana our dominant ag commodities are beef
9 cattle and wheat and barley with a value of crop
10 and livestock production about \$3 billion in 2008.
11 And the economic health of our one million
12 Montanans is inextricably intertwined with the
13 economic health of our agriculture economy.

14 The changes in those industries that
15 influence our farmers and ranchers over the past
16 decade, it really has changed the face of
17 agriculture itself. For example, in 1984 the
18 Montana landscape was dotted with almost 200 grain
19 elevators. Today there's less than 50 even as
20 production has risen.

21 Nationwide, as we heard, the top four
22 beef packers process about 85 percent of our beef
23 and the top four pork packers, around 65 percent of
24 the pork. And just a handful of multinationals now
25 dominate the seed and trait industry.

1 Overlaying all this, we have a rail
2 transportation system that our grandparents could
3 not have comprehended at this point. In 1930 there
4 were over 130 Class I railroads. Today there are
5 seven. Four of those seven control over 95 percent
6 of ton miles hauled in the United States.

7 Yesterday the states -- 14 so far have
8 signed on, and we submitted comments from the
9 states' perspective, the state AGs intend to serve
10 as the starting point to help frame this discussion
11 as we go forward. Yeah, we also know that there's
12 a lot more to be done. Given, there's going to be
13 a number of workshops those comments covered more
14 than just seeds or seeds and hogs, and I think that
15 they squarely address many of the issues that we're
16 grappling with today.

17 For seeds, the issues that the seed
18 industry face are incredibly complex. They do
19 require a thorough understanding of not just
20 antitrust jurisprudence or law but also of
21 intellectual property laws and the way that these
22 two areas of law intersect. And the DOJ and USDA
23 should explore the concerns that have been raised
24 and consider whether there's basis for changes in
25 policies in existing law.

1 And for dairy the Capper-Volstead Act,
2 and the current milk pricing schemes under the
3 Agriculture Marketing Agreement Act, need to be
4 reviewed to ensure that they can continue to protect
5 and benefit dairy farmers as originally intended.

6 And for the meat industry, the USDA
7 and the DOJ should explore legislative or
8 regulatory revisions that will ensure compliance
9 with the Packers and Stockyards Act; specifically
10 whether it would be available -- or would be
11 valuable to adopt rules that regulate captive
12 supply procurement matters. Further, we should
13 explore to what extent state involvement would
14 potentially benefit enforcement of the PSA.

15 And on an earlier panel, Iowa Attorney
16 General Tom Miller made that offer to Christine
17 Varney and the secretary, and that's an offer that
18 we take seriously because we found that when the
19 states and the federal government are working
20 together, we can typically get much more done.

21 When it comes to rail, our comments
22 that we submitted spell out our support of
23 legislation that will reform the framework and
24 functions of the Surface Transportation Board and
25 legislation that would repeal the outdated

1 antitrust exemptions that railroads have reaped the
2 benefits of for so long. The legislation would
3 simply bring railroads under the same rules as
4 almost every other business must follow.

5 Frankly, we're not going to be able to
6 turn back the hands of time. Enforcers can't open
7 up state-sponsored packing plants. I can't go back
8 to Montana and start my own Class I railroad.
9 Rather, I think that our role is ultimately to
10 ensure that any additional consolidation or
11 integration in the agriculture sector does not
12 occur without a critical and coordinated review.

13 Our role is that there is a regulatory
14 framework to fill some of the gaping holes that
15 exist and that where there are potential market
16 failures, actual or perceived, we vigorously
17 investigate and, when appropriate, enforce our
18 laws.

19 And most critically as enforcers, our
20 role is to work together. I for one think that
21 these workshops are a productive first step in
22 understanding the issues that face many of our
23 producers every day. I've heard from farmers and
24 ranchers in my home state that they feel like this
25 has been a long time coming.

1 But I hope that we can all agree that
2 these workshops, even if they have been a long time
3 coming, present both the opportunity and a promise
4 to a renewed commitment. Thanks so much.

5 MARK TOBEY: Thank you, Attorney
6 General Bullock. Now we will hear from Attorney
7 General Chris Koster of Missouri. Chris Koster was
8 sworn in as the 41st attorney general of the State
9 of Missouri in 2009. From 2004 to 2008 Mr. Koster
10 represented the 31st district in the Missouri
11 Senate and contributed to debate over a number of
12 interesting topics like stem cell research, tort
13 reform, and the elimination of Medicaid fraud.

14 Prior to his election to the Missouri
15 Senate, Mr. Koster served as county prosecutor and
16 prosecuting attorney in a small rural county called
17 Cass County in Missouri. He also practiced law in
18 a Kansas City law firm, Blackwell & Sanders, and
19 served as an Assistant Attorney General in
20 Missouri from 1991 to 1993.

21 He was born in St. Louis. He received
22 his degree from the University of Missouri and his
23 law degree from the University of Missouri School
24 of Law. In addition, he has an MBA from Washington
25 University in St. Louis. Attorney General Chris

1 Koster.

2 ATTORNEY GENERAL CHRIS KOSTER: Thank
3 you and good afternoon, everyone. It's been an
4 extraordinary day in a lot of ways. One, it's the
5 first antitrust conference I've ever attended where
6 there are 800 people in the audience who aren't
7 scrambling to file their CLE hours with the local
8 bar.

9 AGs, particularly AGs in the Midwest,
10 of course, have historically been involved in
11 agricultural issues, although outside of the
12 antitrust area typically. In Missouri as in Iowa,
13 I think, CAFO production is a -- probably three of
14 the top five cases in my office in Missouri revolve
15 around CAFO production and the controversies that
16 accompany those all over the country. So
17 agriculture is always in the top of every
18 midwestern AG's mind.

19 But we're also involved in the
20 takeover of grain facilities that have been subject
21 to Ponzi schemes in recent years, licensing of
22 agricultural production, typical environmental
23 cases, groundwater runoff and the like.

24 And then moving into the antitrust
25 area, Missouri as in many of the states here

1 represented were involved in the Zeneca case
2 recently as well as the American Cyanamid case.

3 I've only been on the job at Missouri
4 for about -- coming up on a year and a half, but
5 right as soon as we walked in the door, the
6 antitrust issues that are symbolized by today's
7 conference were really front and center and remain
8 a topic of almost constant discussion between
9 attorneys general around the country.

10 I come here in kind of an odd dual
11 role. As the Attorney General from Missouri, I
12 come from the state that houses and is home to many
13 important companies in this area, including one
14 that is a topic of constant discussion. Along with
15 Rich Cordray, the Attorney General to my left, your
16 right, I also am cochair of the National
17 Association of Attorneys General antitrust working
18 group. And so no matter which hat I happen to be
19 wearing, Missouri wants to be at the table.
20 Whether that table is set here in the Midwest or is
21 set at the Justice Department or anywhere else in
22 the country, Missouri wants to be at the table as
23 these things are decided and I think has a special
24 interest in that regard.

25 What do attorneys general think about

1 when they think about these ag issues that we have
2 discussed today? Well, we have our historic and
3 traditional role, which is to use the antitrust
4 laws and, importantly, the consumer protection laws
5 to protect against abusive contractual language and
6 to guard against anticompetitive behavior that
7 unnaturally extends patents.

8 In the antitrust working group that
9 General Cordray and I work on, we also act as a
10 supporting organization to one degree or another,
11 however you want to phrase it, to the Department of
12 Justice in their analysis of market definition and
13 in their fact-finding efforts.

14 We serve as a local eyes and ears to
15 the Department of Justice as they think through --
16 as Christine Varney's organization thinks through
17 the difficult questions that have been raised here
18 today, and then at the end of that analysis, we
19 either have the ability to act in concert with the
20 Department of Justice or to go in our own
21 direction.

22 Speaking for myself, there's a third
23 principle that I try to advance as we all discuss
24 these issues, and that is the principle of bringing
25 some finality to these issues. Again, speaking

1 only for myself, I don't think that these
2 discussions should go on endlessly. People on
3 either side of these complicated and complex issues
4 deserve answers to their questions, and so while
5 the antitrust working group and all of us
6 individually as antitrust enforcers have an ongoing
7 responsibility to monitor the anticompetitive
8 behavior that is occurring in the agricultural
9 sector to the extent that it is and that is an
10 ongoing effort, bringing finality to discreet and
11 individual decisions so that companies and
12 interested parties are simply not left for years
13 wondering what is going on, I think, is a principle
14 that to a large degree we agree among ourselves on
15 and try to advance.

16 These are complex issues that having
17 been said, and there's no date certain we can offer
18 as we think through difficult problems, but we
19 don't want to think through them forever.

20 One other aspect that strikes me as
21 interesting is the role that private litigation
22 plays in these questions. To draw an analogy to
23 the computer arena, you have the litigation going
24 on in Delaware right now between Intel and AMD, and
25 they are a private party-on-party litigation, piece

1 of litigation, that is occurring in that state.

2 And so I think in general terms, attorneys general
3 look at those questions -- look at that litigation
4 and wonder, are the antitrust issues in private
5 litigation framed correctly?

6 And additionally, to what extent would
7 regulatory involvement with the public sector
8 getting involved in those cases, either as an
9 intervening party or as someone who is bringing
10 separate litigation as occurred in that case in
11 Delaware where the State of New York actually left
12 New York to file their cases in the court in
13 Delaware. Does public -- is the public interest
14 advanced by a separate piece of litigation?

15 Those are all things that we think
16 about because when two major parties are privately
17 litigating, their interests are represented, but
18 who is in the process to represent the public's
19 interest?

20 One question that could arise
21 theoretically as we go down the line in the private
22 litigation that is occurring in St. Louis in Judge
23 Webber's court in the seed issue between Monsanto
24 and Pioneer is when that litigation proceeds to a
25 point where the antitrust questions that are at

1 issue there are decided in one way or another, if
2 the antitrust issues are decided so that the
3 questions remain and are allowed to go to trial and
4 become live questions, then I would think that a
5 lot of parties, both at the state level and perhaps
6 at the federal level, are going to look at that and
7 ask the question: are the public interests being
8 adequately represented as that table is set?

9 And I would think that different
10 states and different interests would want to make
11 their voice heard at some point were that question
12 to go live in St. Louis, if it ever goes live in
13 St. Louis in that litigation sometime over the next
14 year. So those are my thoughts. Rich.

15 MARK TOBEY: Thank you, General
16 Koster. Next we will have Attorney General Richard
17 Cordray of the State of Ohio. Richard Cordray was
18 elected Ohio's Attorney General in November of
19 2008. He previously served as Ohio's Treasurer and
20 as Treasurer of Franklin County, as a State
21 Representative, and as Ohio's first Solicitor
22 General.

23 In these various positions, Attorney
24 General Cordray has been dedicated to the value of
25 community service. In 2003 he received the

1 Presidential Service Award from the Ohio Legal
2 Assistance Foundation, and in 2000 the Human Rights
3 Campaign named him Humanitarian of the Year for his
4 efforts promoting tolerance and understanding in
5 communities.

6 General Cordray earned his master's
7 degree with first class honors from Oxford
8 University and graduated from the University of
9 Chicago Law School where he was an editor of the Law
10 Review. He lives in Grove City in Ohio, and my
11 favorite factoid about General Cordray is that his
12 earliest claim to fame was as an undefeated
13 five-time champion on Jeopardy. General Cordray.

14 ATTORNEY GENERAL RICHARD CORDRAY:
15 That's just a little something to wake you up with.
16 I want to first of all express my appreciation -- I
17 know of my colleagues, all three of us are
18 relatively new state attorneys general -- to your
19 Attorney General here, Tom Miller. He is widely
20 respected, perhaps the most respected attorney
21 general on both sides of the aisle in our National
22 Association of Attorneys General, and it is due to
23 his efforts in particular that this forum is going
24 forth here in Iowa, and it's because of the respect
25 and esteem in which he's held that you had such

1 strong participation. It didn't start out this
2 way, but it ended up with the United States
3 Attorney General coming today, the head of the
4 Antitrust Division, Christine Varney who I know has
5 impressed many of you as she impresses us, and of
6 course, your home Secretary of Agriculture, Tom
7 Vilsack, but Tom Miller really commands great
8 respect. And for those of you who are Iowans, of
9 course we say in the Big Ten Hawkeyes, I hope you
10 appreciate what he does for the people of this
11 state.

12 I also want to say that one of the
13 things that we bring to the table as state
14 antitrust enforcers and state attorneys general is
15 that we bring an intimate knowledge of our states
16 to bear. And that's both of our constituencies in
17 the states and geographies of our states, of the
18 economies of our states, and I think that that's
19 the way in which we fill a role in joint federal/
20 state antitrust enforcement. We have a tremendous
21 amount of experience. We have networks. We have
22 relationships of the kind that federal officials
23 could never possibly have in the 50 states of the
24 union.

25 And I wanted to talk just a little bit

1 about my home state of Ohio and our agricultural
2 sector, which as Steve said, is said in Montana,
3 we have been saying for years in Ohio that
4 agriculture is our No. 1 industry, and that's
5 despite the fact that Ohio is a substantially
6 industrial state. We have a tremendous amount of
7 auto production, steel. We've had rubber. We've
8 had glass and the like. But agriculture is, was,
9 and remains our No. 1 industry.

10 What kind of agriculture do we have?
11 We have a real blend. We're not as specialized as
12 some states are, so we have, you know, an interest
13 in a great number of the issues that have been
14 brought to bear today. We have a dairy industry in
15 the state. We have a wine industry. Did you know
16 that there's an Ohio wine industry? I bet you
17 didn't know that. We have one up toward Lake Erie
18 on the northeastern side.

19 In livestock we have cattle. We have
20 substantial pork production. We have poultry and
21 we have eggs. We also have substantial grain
22 production, mostly corn and soybeans. Those are
23 our leading crops, but we have wheat and other
24 things as well.

25 We have fish farms in the state, and

1 we border on Lake Erie, and we have a very
2 substantial fishing industry that comes out of Lake
3 Erie in particular, and we have substantial hunting
4 for personal consumption in our state, so we really
5 have a broad array of agriculture plus, I guess I
6 would call it, and we're interested in many of
7 these issues.

8 Among the things that have been talked
9 about and touched on today, and they are touched on
10 in more detail in the comments that Steve Bullock
11 and others but Steve took the lead in putting
12 together that we have submitted this week, we are
13 very interested in the railroad antitrust immunity
14 issues. We have been pressing Congress to repeal
15 the antitrust immunity for the railroads because of
16 the concentration that Steve mentioned which we
17 think hurts our grain industry because they're so
18 captive to the costs of transporting that.

19 We are concerned about, although --
20 and I would echo what Steve and Chris have said.
21 There are certain advancements that happened, and
22 there's no reversing them -- the vertical
23 integration in our pork production and our poultry
24 production. We have the so-called factory farms or
25 mega-farms. There's different terminologies in

1 different places in Ohio, some of them foreign-
2 owned, that are very substantial operations.

3 And we have a 15.8 million chicken
4 facility northwest of Columbus. Those pose special
5 problems. There may be antitrust issues there;
6 there may not be. I mean part of the issue is that
7 with vertical integration come great efficiencies,
8 and if we're competing in a worldwide market, maybe
9 we need those efficiencies, but it also can
10 foreclose competition, can restrict choice, can
11 affect prices.

12 And part of what the state attorneys
13 general can do in antitrust enforcement is give a
14 more intimate window, a closer, more detailed
15 window into how those things actually are playing
16 out in different local markets around the country,
17 which is valuable information for our federal
18 cohorts to have. But those also pose non-antitrust
19 issues but very significant issues.

20 We have big environmental issues in
21 our state with some of the mega-farms. And there's
22 been battles over who should be regulating them,
23 whether it's the Ohio EPA or the Ohio Department of
24 Agriculture, and those are ongoing issues in our
25 state.

1 I would also say that right now I
2 think -- and this was mentioned earlier today, and
3 I pricked up my ears because I've seen it in our
4 state too. We have significant financing issues
5 with respect to the agriculture sector, just as we
6 have significant financing issues right now with
7 respect to pretty much all of our businesses
8 because of the credit crunch and the financial
9 crisis that came upon us in 2008-2009. We have had
10 that concern.

11 We have in the state of Ohio -- when I
12 was the state treasurer, I operated -- there was a
13 low interest loan interest rate reduction program
14 for agriculture, but for our farmers to be able to
15 continue to access loans and to be able to do it in
16 ways that is not going to bankrupt them and at
17 interest rates that are affordable and having
18 access to the capital and have the collateral not
19 be called and reassessed in ways that are in some
20 cases unreasonable and may well be unfair is a very
21 great concern for our farmers in Ohio right now.

22 Another interesting aspect of
23 agriculture in Ohio since we are big in corn and
24 soybeans is the increasing overlap between our
25 agricultural industry and our alternative energy --

1 embryonic alternative industry in the state which
2 is something that we are encouraging, subsidizing,
3 and incentivizing very substantially, and I think
4 that's true of many states, certainly a lot of the
5 Midwestern states, and so you have issues there of
6 how does it affect the economics of agriculture to
7 have tremendous subsidization and incentives not
8 only for us but also in the stimulus money that's
9 coming down from the federal government now.

10 It's certainly been a boost for our
11 agriculture sector, but it's also affecting then
12 input prices for livestock and other things. You
13 know, there's just many different intimate
14 connections among markets, and these are all issues
15 for us.

16 I would close by just saying that
17 there's different models of federalism and how
18 federal and state officials can cooperate. The
19 least attractive model for us is where the states
20 are regarded as in effect field offices of the
21 federal government. There are areas where that is
22 maybe illustrative and an accurate description of
23 the relationship. Not really true in this sector,
24 I would think.

25 There's also the argument that states

1 can be laboratories of federalism where we can
2 experiment with different approaches. That's maybe
3 to a limited degree true here, but our markets here
4 have become national and international, so that's
5 really less relevant to the point.

6 To me the right model here is one of
7 cooperative federalism where we and the federal
8 government are working together, really pursuing
9 the same ends with the same objectives. We bring
10 some different talents and resources to the table,
11 but if we can work arm in arm -- and that certainly
12 has been the experience I've had. I've just been
13 attorney general for 14 months, and it has been a
14 great relationship between the federal enforcers at
15 DOJ, the Federal Trade Commission, here we're with the
16 Department of Agriculture, and the states.

17 I am told by those who have been
18 around longer that it certainly wasn't always that
19 way and wasn't even that way very recently. So I'm
20 especially appreciative of the relationship we've
21 forged with this administration because it does
22 help us both do our work effectively and be of
23 assistance to the federal officials as they try to
24 do their work effectively. And the power to convene
25 groups like this in a setting like this -- and I

1 know they're doing it across the country this year
2 and working with state attorneys general to do
3 that -- is, I think, especially helpful because try
4 as we might, as well as we think we know our
5 states, those of us who are elected attorneys
6 general, we drive the highways and byways. We're
7 in every corner of the state. We're meeting with
8 all kinds of constituencies. There's always more
9 for us to know.

10 I think that's why God gave us
11 campaigns, but in between campaigns we can have
12 workshops, and so we will continue to do that, and
13 we appreciate being here with our partners. Thank
14 you very much.

15 MARK TOBEY: Thank you very much,
16 General Cordray. And you mentioned and your
17 colleagues mentioned the comments and the comment
18 process. You all have filed comments. I've been
19 in and out of the conference over the last few
20 hours, and I don't know if it's been mentioned, but
21 every comment, all 15,660--some odd comments that
22 the Department of Justice and the United States
23 Department of Agriculture have received, are now
24 posted on the Department of Justice website, and
25 they are accessible over the Web, and we intend to

1 continue that process, and we will have the state
2 attorneys general's comments up there as soon as
3 possible.

4 Now we turn to the federal component
5 of the enforcement landscape, and we're very
6 pleased to have the fine representatives of the
7 important constituent agencies in that enforcement
8 landscape. We'll hear from Steve Obie, Stephen
9 Obie, who is the director of the Division of
10 Enforcement at the Commodity Futures Trading
11 Commission. We'll hear from John Ferrell who is
12 with the U.S. Department of Agriculture and
13 oversees three very important agencies at USDA, and
14 we'll hear from Bill Stallings who is kind of in
15 some ways the chief agricultural enforcer in the
16 Antitrust Division. He's shaking his head but --

17 WILLIAM STALLINGS: I'm the assistant
18 chief.

19 MARK TOBEY: I just said in some ways.
20 Certainly the go-to guy for me. So anyway, we'll
21 start with Stephen Obie. Stephen Obie is the
22 Director of the Division of Enforcement at the
23 Commodity Futures Trading Commission.

24 Mr. Obie joined the CFTC in 1998 as a
25 senior trial attorney in the New York office. And

1 he received his law degree cum laude in 1991 from
2 SUNY Buffalo School of Law and his B.A. summa cum
3 laude -- I didn't do any of those things -- from
4 Drew University.

5 After law school he clerked for
6 federal court, court of claims, and the office of
7 staff attorneys at the Eighth Circuit. Prior to
8 joining the CFTC, Mr. Obie was a litigator at
9 Fried Frank, and he was also an adjunct professor
10 and taught a course at Brooklyn Law School called
11 trading derivatives. Stephen Obie.

12 STEPHEN OBIE: Thanks a lot, Mark. I
13 really appreciate the opportunity to be here, and I
14 appreciate that so many of you have hung in. The
15 CFTC's mission -- we're about 600 people. We're
16 one of the smallest of the federal agencies -- as
17 you may know, is to protect market users and the
18 public from fraud and manipulation and abusive
19 practices related to the sale of commodity and
20 financial futures and options.

21 And our other mission is to foster an
22 open, competitive, and financially sound futures
23 and options markets, and in support of that
24 mission, we conduct active surveillance of the
25 commodities futures markets, including the markets

1 in which many members of this audience participate.
2 And when we find wrongdoing, the CFTC's enforcement
3 division is committed to ensuring that enforcement
4 of the commodities laws is addressed through civil,
5 criminal, and administrative actions by federal and
6 state agencies wherever possible, including the
7 state attorneys general who are up here today.

8 The agricultural futures markets
9 provide two vital functions. First, futures
10 markets act as a venue for price discovery, and
11 futures market prices can and often do act as
12 references for pricing of cash market transactions.
13 Second, futures markets provide a means of price
14 risk management. For those who choose to use
15 futures markets for risk management, contracts can
16 be bought or sold to lock in prices or to reduce
17 volatility. Market transparency and efficiency are
18 therefore vital to ensuring that agricultural
19 futures markets continue to serve these important
20 roles.

21 In an effort to improve market
22 transparency, the CFTC recently started publishing
23 a revised Commitment of Traders Report. The
24 Commitment of Traders Report is a weekly summary of
25 trader positions in each market and is aggregated by

1 trader type. We've recently disaggregated some of
2 the trader types and expanded that market
3 transparency. The redivision of these new numbers
4 goes a long way to better informing the public of
5 the types of entities that are participating in the
6 commodities markets and sort of the position
7 leanings that they hold.

8 We're unique in that regard as a
9 market regulator in publishing one of the most
10 watched-upon reports that our agency puts out. Our
11 chairman at CFTC, Gary Gensler, has also been
12 leading efforts to regulate the over-the-counter
13 derivatives marketplace. Much of the concerns that
14 have been addressed today about transparency are
15 concerns that he has addressed going forward.

16 We've suffered the worst financial
17 crisis in the past 80 years as a nation, and our
18 chairman has been on the forefront of seeing that
19 effective reform of the over-the-counter
20 marketplace occurs, and he believes that three
21 areas need to be revised. First, we must
22 explicitly regulate derivatives dealers. They
23 should be required to have sufficient capital and
24 to pose collateral on transactions to protect the
25 public from bearing the costs if dealers fail.

1 Dealers should be required to meet robust standards
2 to protect market integrity and lower risk.

3 Second, to promote public
4 transparency, standard over-the-counter derivatives
5 should be traded on exchanges or other trading
6 platforms. The more transparent a marketplace, the
7 more liquid it is, the more competitive it is, and
8 lowers the cost for companies that use derivatives
9 to hedge risk. Transparency brings better pricing
10 and lowers for all parties the derivatives
11 transaction costs.

12 During the financial crisis, Wall
13 Street and the federal government had no price
14 reference for particular assets, assets that we all
15 started to begin to call toxic. Financial reform
16 will be incomplete if we do not achieve public
17 market transparency.

18 And third, to lower risk further,
19 standard over-the-counter derivatives transactions
20 should be brought to clearinghouses. Clearinghouses
21 act as a middleman between two parties to a
22 transaction, and they guarantee the obligations of
23 both parties. Clearinghouses in the futures markets
24 have been around since the 19th century and have
25 functioned both in clear skies and during stormy

1 times, through the Great Depression, through
2 numerous bank failures, through two world wars, and
3 through the 2008 financial crisis to lower risk.

4 Another issue that is of great
5 importance to the CFTC is the convergence of cash
6 prices and futures prices. While this is not an
7 issue in all markets, price convergence is crucial
8 for those market participants who are using our
9 nation's futures markets.

10 Last year the CFTC convened a
11 convergence committee under the direction of
12 Commissioner Michael Dunn, a resident of the great
13 state of Iowa and the chairman of the Agricultural
14 Advisory Committee of the CFTC. The committee was
15 originally tasked with assessing convergence issues
16 in wheat markets. However, the CFTC is committed
17 to working with members of industry as well as the
18 futures exchanges to improve convergence wherever
19 there are deficiencies.

20 As a final point, I'd like to
21 emphasize the importance of your role in this room
22 in creating transparent and efficient markets. If
23 you see something that doesn't look right, we want
24 you to bring it to our attention so that we can
25 investigate. At the CFTC we have a hot line set up

1 to handle calls from the public. We have a
2 dedicated e-mail account to receive referrals or
3 concerns. I encourage all of you to use these
4 resources if you feel that you have any information
5 about futures concerns, concerns of rip-offs in the
6 futures markets or in other markets.

7 There are two ways to reach us. One
8 is to call us at a toll free number, 1-866-FON-CFTC
9 phone being spelled F-O-N, which is also
10 1-866-366-2382. Or you can e-mail information to
11 us at enforcement@cftc.gov.

12 In closing, I'd like to thank the
13 Department of Justice and USDA for the leadership
14 in this conference. I'd like to thank you, Mark
15 Tobey, for moderating this panel and for all your
16 work on this conference and my staff who have
17 helped me get up to speed on the issues of this
18 conference, including Mark Higgins who's here
19 today.

20 I continue to look forward to
21 interacting with everybody in the audience and to
22 hearing the remarks from my fellow colleagues.

23 MARK TOBEY: Thank you, Steve. Before
24 we go on to John Ferrell, the unflappable John
25 Ferrell who I've had the opportunity to work with a

1 lot recently and will obviously work with a lot
2 more in the future, I think our FFA volunteers may
3 have left the building, so if you do have questions
4 and you want to hand them to that gentleman there,
5 that is Sam Dinning who is the main sort of
6 paralegal who helped plan this conference, so
7 please pass your questions to Sam if you have
8 questions for this panel.

9 So let's move to John Ferrell. John
10 Ferrell is the Deputy Under Secretary for Marketing
11 and Regulatory Policy at USDA, and he oversees
12 agencies responsible for ensuring animal and plant
13 health, agricultural marketing, and competitive and
14 fair trade practices.

15 Prior to working at USDA, John served
16 as the majority professional staff on the U.S.
17 Senate Committee on Agriculture, Nutrition, and
18 Forestry. In this capacity he provided congressional
19 oversight of implementation of the 2002 farm bill and
20 contributed to the development of the 2008 farm bill.
21 John grew up on a hog, cattle, corn, and soybean farm
22 in Iowa. John Ferrell.

23 JOHN FERRELL: Thank you. And I just
24 want to say that I am not an attorney. I'm outnumbered
25 up here. I've never been on Jeopardy either.

1 But I did grow up on a hog farm. You
2 know, I look across this room, and I recognize a
3 lot of people. I can almost, like, go around and
4 name almost everyone here. It's really great to be
5 back home.

6 A little bit about myself, I grew up
7 during the farm crisis. I remember what it was
8 like to have 8 cent hogs, trying to make it through
9 that, and I remember during that time our bank got
10 overextended, and the FDIC came in and closed it
11 down. We had our assets all frozen. Imagine
12 trying to sell fat hogs during 100 degree
13 temperatures and you can't sell your hogs. That
14 doesn't work out so hot.

15 You know, during that time, you know,
16 as in rural areas, they've got people who are
17 moving out of the county. Our school was forced to
18 shut down because it got too small. So when
19 Secretary Vilsack today talked about that he was
20 concerned about rural America, I share those
21 concerns, and I hope that these workshops will help
22 us create a good dialogue and have a good
23 discussion on looking at, you know, what is working
24 and what is not working.

25 At USDA we are an every day and

1 every way department because we truly touch the
2 lives of so many people across the country and
3 overseas. We help farmers produce a sufficient
4 nutritious food supply. We preserve the
5 environment through conservation initiatives, and
6 we make sure our meat and poultry and eggs are
7 wholesome and fresh, and we help those who need
8 food to get it.

9 USDA also plays an important role
10 ensuring that America's livestock and poultry
11 markets are fair and aboveboard such as through the
12 Packers and Stockyards Act. We also carry out
13 other livestock and other price reporting to
14 improve transparency such as through the Livestock
15 Mandatory Reporting Act, and under the Perishable
16 Agricultural Commodities Act we prevent unfair and
17 fraudulent practices in the marketing and selling
18 of agricultural commodities.

19 We also ensure producers that want to
20 join together to improve their market opportunities
21 are not discriminated against just because they
22 belong to an association of producers such as
23 through the Ag Fair Practices Act, and we also
24 oversee the protections provided in the
25 Capper-Volstead Act.

1 Today I would like to focus my remarks
2 on the Packers and Stockyards Act. Since this law
3 was enacted in 1921 to protect producers from
4 unfair and deceptive practices in the marketplace,
5 GIPSA makes sure that packers and dealers have the
6 financial protections in place to conduct business,
7 ensure producers are paid promptly, and stop
8 practices that will harm producers.

9 Now, as you have heard today, there
10 has been a fairly consistent consolidation in the
11 livestock industry, and it continues to evolve.
12 However, increased consolidation and vertical
13 integration is not by themselves violations of the
14 Packers and Stockyards Act, but what it does do is
15 a consolidated market can increase potential for
16 unfair practices. And such a market can influence
17 the behavior of those that are dealing with
18 producers.

19 Now, USDA can address unfair practices
20 and other violations under the Packers and
21 Stockyards Act in several ways. First, GIPSA can
22 initiate a complaint or act on complaints from
23 producers, Congress, or others. GIPSA has a 24/7
24 toll-free hot line at 1-800-998-3447 for reporting
25 of complaints. And GIPSA will investigate all

1 complaints received to see if there's sufficient
2 evidence of a violation under the Packers and
3 Stockyards Act.

4 Now, if a violation is determined,
5 GIPSA may get the firm to admit their violation and
6 pay a fine. If not, GIPSA turns the case over to
7 USDA's office of general counsel who can then file
8 an administrative complaint. Ultimately, USDA can
9 force the firm to cease and desist their activity
10 or pay for the civil or administrative penalties.
11 Now, at any time USDA can also work in
12 collaboration with the Department of Justice on
13 these actions as well.

14 Now, the President's new budget for
15 fiscal year 2011 makes an important investment for
16 rural communities so that they're self-sustaining
17 and can grow, and in particular the President has
18 included additional funds for GIPSA to hire
19 16 investigative staff which will allow GIPSA to
20 conduct 500 more company audits. This increase
21 builds on increases in 2009 and 2010 to strengthen
22 compliance and enforcement activities. These funds
23 will also help GIPSA better integrate legal
24 capacity in their enforcement process which is long
25 overdue, has been called on by both USDA's

1 Inspector General and the Government Accountability
2 Office.

3 Now, in our efforts to try to get more
4 funds into our enforcement activities, with the
5 Department of Justice now willing to provide us
6 their attorneys, I now realize maybe I didn't have
7 to work so hard to try to increase our budget. So
8 we appreciate the help of DOJ.

9 This funding increase also allowed
10 GIPSA to streamline its enforcement tracking
11 process by deploying an automated system that
12 tracks investigations from initiation to final
13 resolution which will allow the agency to more
14 quickly monitor progress and more quickly move
15 investigations to completion. All of these actions
16 will result in increased GIPSA presence in the
17 marketplace.

18 If we do want to get serious about
19 getting producers into livestock production, they
20 need to know that the market that they're getting
21 into is fair and aboveboard.

22 We will also be undertaking new rule-
23 making to ensure fair markets. In December GIPSA
24 published a final rule on poultry contract fairness
25 that would prevent companies from arbitrarily

1 terminating contracts without providing at least
2 90 days' notice. The final rule also requires that
3 a grower be presented a contract at the same time
4 as the building specifications so that they can
5 make some business decisions.

6 For too long we have had complaints
7 from producers where they were saying that they
8 were being told or promised of a very long-term
9 contract. They would go out to get financing.
10 They would start the building of their facility and
11 later find out when the contract would be
12 presented, it would be in a form that was not very
13 helpful to the producer. So we wanted to fix and
14 level the playing field so that when the producer
15 gets the contract, they also are seeing it at the
16 same time as the building specifications so they're
17 not left in a take-it-or-leave-it situation.

18 GIPSA is also developing a proposed
19 rule to carry out the livestock title of the 2008
20 farm bill. In general the farm bill required that
21 USDA define undue preferences under the act and
22 develop criteria it will consider in determining if
23 additional capital investments required of a
24 producer is a violation under the act. It also
25 requires that a reasonable period of time be

1 allowed for producers to remedy a breach of
2 contract.

3 Additionally, it requires that
4 producers be provided a meaningful, fair
5 arbitration process should that producer choose to
6 use arbitration to settle their dispute.

7 Now, we encourage those that when this
8 rule comes out that you all comment on it. As you
9 know, the livestock industry is very complex. It's
10 very dynamic. And this rule will need as much
11 input as we can get from everyone in this room and
12 across this country.

13 Lastly, I would just like to comment
14 on the great relationship that USDA has got, has
15 had with the Department of Justice in the last
16 year. It has been -- you know, in my previous
17 capacity on Capitol Hill, one of my biggest
18 complaints was that I didn't feel that USDA and the
19 Department of Justice did work together. In fact,
20 I don't think they did. But I can say that today
21 that has changed completely, and it's been very
22 good to be able to have such a good working
23 relationship.

24 So I will stop now. Thank you.

25 MARK TOBEY: Thank you, John. Lastly

1 but not least, we have Bill Stallings. William
2 Stallings is the assistant chief of the
3 Transportation, Energy, and Agriculture Section,
4 TEA, of the U.S. Department of Justice Antitrust
5 Division. TEA has responsibility within the
6 Department of Justice for the enforcement of the
7 antitrust laws and the promotion of competition for
8 matters involving agricultural commodities such as
9 livestock, grain, and seeds.

10 Mr. Stallings is a graduate of the
11 University of North Carolina School of Law, and
12 I'll have to say he's been a very good sport this
13 year with the Tar Heels having a down year in
14 basketball. And he joined the Division in 1998 and
15 became the assistant chief of TEA in 2005. Bill
16 Stallings.

17 WILLIAM STALLINGS: Thank you, Mark.
18 I recognize I'm the last panelist after a very long
19 day and that we want to get to the open mic
20 portion, so I'm going to keep my comments very
21 short, and I just wanted to cover a couple kind of
22 quick almost process things but I think items which
23 are very important, and that is, what exactly does
24 the Antitrust Division do? And what are the types
25 of interests that -- and issues we examine?

1 We enforce the antitrust laws, and
2 it's in our name. The antitrust laws, as most
3 people here know, cover agreements in restraint of
4 trade, monopolization, and merger review. There's
5 a lot of conduct which affects people that do not
6 fall into any of those buckets, and it's one
7 frustration I think people sometimes have in
8 thinking that something is an antitrust action, and
9 although we understand the problem, we understand
10 the issue, it doesn't quite fall into an antitrust
11 framework.

12 That's one reason we're having these
13 workshops, is to work with the other government
14 agencies so that we can figure out and look at the
15 conduct and talk to our other agencies and try to
16 get some type of appropriate resolution.

17 But in just looking at the antitrust
18 laws, something that Attorney General Bullock said,
19 is -- I think I want to reframe my comments and tee
20 off what he said. JBS did not simply have a change
21 of heart. When we looked at that transaction, I
22 spent, you know, a good year and a half of my life
23 on it. It showed what the Antitrust Division can
24 do, and it showed the steps we have to take to get
25 something done.

1 We're not a regulatory agency. We
2 simply can't decide that an industry is too
3 concentrated and say it needs to change. All we
4 can do is go to court and ask a judge for relief.
5 And as Attorney General Miller mentioned before,
6 that is a -- that's a big restriction on what we
7 can do, but it's a challenge to us, but it's a
8 challenge that we undertake when the facts are
9 right.

10 And in the JBS case, which we can talk
11 about the substance of a lot more in the Colorado
12 workshop this fall, the issue is simply as outlined
13 before: two of the top four beef processors were
14 seeking to merge. We looked at it. We had an
15 incredibly intense factual review. Started off
16 working very closely with our colleagues at USDA to
17 get -- as soon as the deal was announced -- to get
18 kind of an understanding of their view of the
19 markets since obviously they live with them day in
20 and day out.

21 We worked very closely with the state
22 AGs. All of the states represented here were on a
23 working group we had to investigate the case. The
24 working group conducted numerous, numerous
25 interviews of market participants, and I personally

1 know we've interviewed many people in this room in
2 connection with that case. And all that was an
3 effort for us to develop the facts that once we
4 decided the facts justified a challenge to the
5 case, we could present to the court.

6 And we did that. We had to do it by
7 legal timeframes, a very quick timeframe, and we
8 challenged the case in federal district court in
9 Chicago, and about four months into the litigation,
10 the parties abandoned the deal.

11 It was a very significant case for us,
12 both in showing that we take agricultural issues
13 very seriously, but I think it was also significant
14 on a substantive level, in that one of the critiques
15 that we've heard very frequently is that the
16 Antitrust Division does not care about farmers,
17 does not care about producers.

18 If you look at that, the complaint we
19 filed, it has -- one of the -- in describing the
20 anticompetitive effects, it first looked at the effects
21 the transaction would have on consumers. Obviously
22 that's the bread and butter of what the Antitrust
23 Division is all about, ensuring lower prices,
24 ensuring innovation, ensuring that consumers get
25 the benefits of competition.

1 But if you look at the complaint,
2 there is another section of it, and that section
3 was about the harm that that transaction would
4 cause to producers. And we outlined the harm as we
5 saw it in regional geographic markets for the
6 ranchers, and we challenged the case on that
7 ground, and I think it should show convincingly to
8 everyone in the audience here that the Antitrust
9 Division will take action to preserve competitive
10 markets for producers.

11 I wanted to just kind of stress one
12 more thing about that case and about our
13 investigations in general is that we do need
14 cooperation of people basically people in this room
15 and others that when we conduct our investigations,
16 we need to gather facts, and you know, obviously we
17 want to hear general concerns about competition in
18 the industry, but we also, though, want to hear
19 specific facts that will help us to develop cases
20 when we're doing our merger review and that, you
21 know, if some deal gets announced down the road,
22 don't be surprised if basically we cold-call you
23 one day to say "We understand that you're in the
24 industry." We are, as Attorney General Holder said
25 this morning in his President Eisenhower quote --

1 you know, me and my colleagues, we are the ones
2 with the pencils in Washington trying to figure
3 out, you know, what's going on, and we do need your
4 assistance to develop facts.

5 At the end of the day when we look at
6 the factual record, we might find that the merger
7 is not anticompetitive, and we may close our
8 transaction -- close our review of it. The merger
9 may go forward, and there may be a sense of
10 frustration, but we need to make a call on the
11 merits. And when we do find facts that support a
12 reason to challenge a merger, we will do so, and as
13 Assistant Attorney General Varney said today, you
14 know, we just two weeks ago sued to unwind a Dean
15 Foods milk merger.

16 So, and I think -- I have to qualify
17 this a little bit, but of the litigated challenges
18 to mergers in the past few years, JBS and Dean
19 Foods, both agricultural ones, both -- I think
20 there was one other one that was litigated, but you
21 can tell that the focus is on agriculture, and we
22 are serious about that focus.

23 There is a frustration on our end at
24 times in that we do recognize we have to go to
25 court and that the burden of proof that we bear,

1 it's a strenuous one. We have to convince the
2 judge that a merger should be stopped. That
3 sometimes frustrates us and our goal of basically
4 advocating for a competitive market, so in addition
5 to our enforcement activities, we do take very
6 seriously our role as a government agency that can
7 engage in competition advocacy.

8 I think as you can see from this
9 workshop, we want to work with the other agencies,
10 with the states to -- when we don't quite have
11 enforcement actions that might address competitive
12 issues, we can use a competition advocacy angle to
13 try to make markets more effective.

14 MARK TOBEY: Thank you. It's been a
15 long day, and we're going to have a little dialogue
16 about a question. We want to get to the farmer
17 testimony phase.

18 There were several good questions or
19 comments that came forward. I want to get to two
20 of them and then maybe just ask if any of the
21 participants on the panel have any closing thoughts
22 they want to give.

23 Steve, I'm afraid you drew one of
24 these questions I want to ask you.

25 STEPHEN OBIE: That's why we're here.

1 MARK TOBEY: The question is what
2 would it take to extend CFTC authority to cover
3 cash daily trading at the Chicago Mercantile
4 Exchange?

5 STEPHEN OBIE: In some ways it would
6 take an act of Congress to extend our authority in
7 any area, but this is one of the areas where the
8 Division of Enforcement is looking at in terms of
9 cases. If you take a look at the DFA case that we
10 brought a couple years ago, that involved in some
11 respects not only milk futures but the cheese
12 market, and our statute is fairly broad so that if
13 there are cash market issues that affect the
14 futures markets, we can be involved.

15 And I can say that we have partnered
16 in a number of cases with USDA and others. So if
17 there's a specific allegation, I would definitely
18 like to know about it so I can follow up on it.

19 MARK TOBEY: Thank you. The other
20 question, I'd like to handle myself. The question
21 is, given the power that retailers like Walmart
22 have in the food supply chain, will the Federal
23 Trade Commission be involved in future hearings?

24 And the answer to that is yes. The
25 hearing that -- the workshop that we're planning on

1 December the 8th in Washington, D.C., we will ask
2 the Federal Trade Commission, and I think they will
3 be involved in that hearing, where we will talk
4 about where the food dollar goes from the farm gate
5 to the retail sale, and the FTC will be a part of
6 that.

7 So let me just then turn it back to
8 the panel and say does anybody have any parting
9 thoughts or comments? Steve.

10 STEPHEN OBIE: Okay. So you know, I'm
11 taking away three things from this workshop, and I
12 really appreciate the dialogue that's occurred.
13 One, to USDA and to the DOJ, the CFTC would like to
14 participate in the task force. We've already
15 detailed to the Criminal Division of DOJ a couple
16 of CFTC attorneys. We certainly want to be a
17 member of this task force with regard to the USDA.

18 Second, clearly pricing issues are of
19 great concern to everyone. Dominance and
20 transparency are the issues, and I think in the
21 following workshops that we have that that should
22 be something that gets addressed.

23 And then finally, continuing the
24 dialogue with all aspects of not only the industry,
25 regulators, the state's attorneys general is very

1 important as we go forward. And I appreciate the
2 opportunity that I've had to get together here and
3 to meet with so many people because that dialogue
4 is very important.

5 MARK TOBEY: Thank you very much.
6 Anybody else? Alright. Let me just say we'll
7 move to the farmer testimony immediately, I think,
8 or as quickly as we can.

9 Just because we're enforcers, I want
10 to say also that I know I'm willing, the Department
11 of Justice is willing, and the U.S. Department of
12 Agriculture is willing -- although we've been
13 trying to develop a very public record here, we are
14 willing to meet with people confidentially if that
15 is something that you would require, and if you
16 would like that kind of treatment, please give me a
17 card, give me something, let me know, and we'll
18 follow up with you. Thank you.

19 (Off-the-record discussion.)

20 PHIL WEISER: Okay. We are going to
21 go into the final session. The preview session we
22 had during lunchtime, we went ahead and went
23 through one set of numbers. And we will give those
24 numbers one more shot if any of you weren't here
25 but do want to speak, and then from there we'll

1 give a new set of numbers, the idea being that we
2 want to give all of you who sat through today's
3 discussions and have reflections you want to share
4 a chance to do so before we wind up.

5 So let me read through the tickets we
6 have of those who have already been picked, and
7 then we can see if folks would like a chance to be
8 heard. 479, 441, 388, 441, 411, 464, 392, 409,
9 385, 424, 485, 462. I hear Bingo to the left over
10 there. Just checking if you're listening. 533,
11 434, 505, 499.

12 Alright. I see we have four people
13 lined up. We will start with these four
14 individuals, and then we'll do another round of
15 some of the other tickets, to see if we have other
16 people. So two minutes, first speaker. If people
17 could please be seated so our speakers have a
18 chance to be heard. And please introduce yourself
19 again.

20 BILL BRIDGEFORD: My name is Bill
21 Bridgeford.

22 PHIL WEISER: A little louder, Bill.

23 BILL BRIDGEFORD: My name is Bill
24 Bridgeford, and I'm a farmer from Alabama. We grow
25 cotton, corn, soybeans, wheat, and canola. Each

1 year when we decide what we're going to plant, the
2 most -- the biggest decision we make is what
3 variety and what seed we want to plant.

4 We think we have plenty of choices,
5 and we just choose the ones that we think will give
6 us the best production at the best cost. And so
7 that's my comment and I appreciate you very much.

8 PHIL WEISER: And we appreciate you
9 making the trip. Thank you very much, Bill.

10 MAURICE PARR: My name is Maurice
11 Parr. I go by the name of Mo Parr. I was sued by
12 Monsanto. I have been in business for 27 years.

13 After 13 years, Monsanto got a patent,
14 supposedly, on their Roundup Ready soybean. At that
15 time I put a disclaimer on the receipt that I gave
16 farmers in which I said on that receipt "As of the
17 date this ticket was printed, the U.S. Congress
18 through the federal seed laws has expressly
19 protected the right of farmers to save seed that
20 they have produced to replant on ground they own,
21 lease, or rent. Certain seed/chemical companies
22 attempt to circumvent those rights by requiring
23 farmers to sign agreements giving up those rights
24 in order to purchase certain brands or types of
25 seeds. Custom Seed Cleaning," which is what I call

1 my business -- "Custom Seed Cleaning is not a party
2 to those agreements and will in no way hold itself
3 responsible for enforcement or compliance of said
4 agreements."

5 Monsanto sued me in federal court
6 alleging that I encouraged, abetted, aided -- aided,
7 abetted, encouraged, and enticed the farmer to break
8 the patent law. I am guilty of giving the farmer a
9 copy of the Supreme Court decision January the 18th
10 of 1996 authored by Justice Antonin Scalia in which
11 nine of the judges concurred -- eight of the judges
12 concurred with his opinion that the farmer was allowed
13 to save seed. They did not say that -- the justices
14 did not say "except for genetically modified, except
15 for Roundup Ready, except for anything."

16 As far as I'm concerned, the Supreme
17 Court, the American people through the Congress in
18 passing the law, and President Nixon in signing
19 that law gave the -- protected the right of farmers
20 to save their own seed.

21 Monsanto has essentially ruined my
22 business. When the patent runs out in 2014, I'll
23 be 80 years old. I probably will not be cleaning a
24 lot of seed after I'm 80 years old, but in the
25 meantime, I've lost my business. I don't know that

1 Henry David Thoreau was an attorney, but I kind of
2 liked the attitude that he had in his book on civil
3 disobedience in which he said that a person has the
4 right and the moral obligation to disobey laws that
5 are unjust.

6 I see this as an unjust law. I'm not
7 certain that they have a right to patent on a
8 living organism. Thank you.

9 PHIL WEISER: Thank you.

10 JOEL GREENO: I'm Joel Greeno, dairy
11 farmer from Kendall, Wisconsin.

12 PHIL WEISER: Please speak up, Joel.

13 JOEL GREENO: Yeah. Yep. Is that
14 better? Better? Alright. I'm Joel Greeno,
15 dairy farmer, Kendall, Wisconsin, national
16 president of the American Raw Milk Producers
17 Pricing Association, serve on the executive
18 committee of the National Family Farm Coalition and
19 founder of Scenic Central Milk Producers.

20 And I first want to thank the U.S.
21 Justice and Agricultural Departments for hosting
22 this historic series of workshops. I'm encouraged
23 that the departments are taking a serious look at
24 the consequences of concentration on farmers like
25 myself.

1 However, with the magnitude of these
2 problems, it is clear that we need an additional
3 hearing focused on seeds with adequate time for
4 farmers to speak.

5 I'm here to be the voice of the
6 voiceless, my parents whose farm was sold at
7 sheriff's auction and on the courthouse steps, for
8 the New York state dairy farmer who in mid-January
9 went into his barn and shot 51 of his cows and then
10 himself, and for my neighbor who was 62 years old,
11 stopped at my farm last week and asked how he could
12 get on food stamps. He and his sister were
13 stripped of their family's dairy farm last year,
14 owned since 1942, and he said the \$9,000 he was
15 getting from Social Security didn't pay his bills.

16 My life has value. My work has value.
17 And the products I produce have value. And
18 corporations like Monsanto and Kraft do not have
19 the right to dictate the value of my work.

20 Our nation's farmers' lives are right
21 now in the hands of the Department of Justice and
22 the USDA. You people have a choice to make.
23 People first and corporations last. And the bottom
24 line of this is simple. Farmers must receive cost
25 of production plus a reasonable profit from the

1 marketplace, not from subsidies and other programs
2 that fall horribly short and are grossly inadequate.

3 GMO companies are taking control of
4 the world seed supply, aligning themselves to
5 benefit financially from every seed sold in the
6 world and the -- and also from the patenting of
7 life. What better way to profit than own the
8 source of all the food we eat?

9 They have reduced my options for
10 non-GMO seed. Many of my options left have no
11 practical use on the dairy farm, and GMOs are of no
12 value when fed to dairy cattle.

13 GMOs have increased my costs to raise
14 corn due to Monsanto's purchase of Holden Seed,
15 taking control of much of corn's seed true base
16 stock, nearly doubling the cost of my seed. All
17 this at a time when milk prices are at their
18 all-time worst. The last thing we need is
19 increased costs with absolutely no benefit.

20 I'm urging the Departments of
21 Agriculture to broaden the scope of their
22 investigation and actions being considered to
23 include congressional and administrative actions
24 such as removing utility patents on seed and seed
25 genetics, transferring liability for economic

1 damage resulting from protecting crop varieties to
2 the patent holder, and reinvigorating public hope
3 and broader development.

4 Of course, it's clear we need to
5 enforce antitrust law and break up monopolies.
6 Farmers will not benefit from simple realignment of
7 market shares held by three or four seed companies
8 dominating the industry. These actions must be
9 about restoring farmer choice and farmers' rights.

10 It is important to note that people in
11 my community, including farmers and small seed
12 dealers, breeders, and companies are unwilling to
13 come and testify in public due to fear and
14 intimidation. The culture of fear that exists
15 around patent seed technologies is real and
16 serious. Thank you for the opportunity to provide
17 these comments.

18 PHIL WEISER: Thank you.

19 KRISTINA HUBBARD: Hello. My name is
20 Kristina Hubbard, and I'm the author of this report
21 called "Out of Hand: Farmers Face the Consequences
22 of a Consolidated Seed Industry." It was provided
23 to the docket for public comments. First of all,
24 thank you for having this workshop. It's historic,
25 and I appreciate the agencies coming together,

1 bringing us together to talk about these problems.

2 I wanted to echo what the last
3 gentleman said in that concentration of the seed
4 industry was a pretty small part of today's
5 discussion, and I do think it warrants its own
6 hearing with an adequate amount of time for farmers
7 to speak. That said, again, this workshop, again,
8 thank you for hosting it.

9 We wrote this report, "Out of Hand,"
10 because many farmers say that the prices they're
11 paying are indeed out of hand for seed. We wrote
12 it because farmers say that their choice, their
13 seed options are dramatically reduced, especially
14 in the way of conventional corn and soybean
15 varieties. We're finding that farmers fear that
16 the best and newest genetics will only be introduced
17 with expensive patented traits stacked into them, and
18 this is a problem that needs to be part of this
19 discussion.

20 I'm encouraged that the agencies are
21 talking about examining the role patents play in
22 facilitating concentration in the seed industry,
23 and I hope that the focus will not be only on
24 competition within the trait industry but rather
25 the concentration of ownership over plant genetic

1 resources, over germplasm, the most fundamental
2 piece of agriculture.

3 Congress long argued that utility
4 patents should not be applied to seeds and seed
5 genetics, to sexually reproducing plants, such as
6 corn and soybeans, and I hope that legislative
7 actions and options are considered in this
8 discussion as well. I think Congress should
9 revisit the Plant Variety Protection Act and
10 clarify that that should be the sole protection for
11 plant developers producing these crops.

12 And just a reminder, a patent to
13 remove a farmer's right to save seed, a farmer's
14 ability to save seed is a form of competition.
15 And then lastly on that point, patents are also
16 locking up important genetic resources that public
17 and private plant breeders alike often cannot
18 access to further innovation.

19 Lastly, I wanted to speak to something
20 that General Holder said this morning. He said --
21 he was encouraging us to be frank about our
22 perspectives. And unfortunately, there are many
23 people here today -- there are many people who
24 aren't here today because they are unwilling to
25 speak. They are afraid of repercussions from the

1 dominant players.

2 My colleagues and I have spoken to at
3 least a dozen seed companies, truly independent
4 seed companies, who are worried about talking about
5 the shortcomings of the seed industry. They're
6 worried about simply sharing their story.

7 And so this culture of fear that the
8 last gentleman mentioned is truly stifling voices
9 of people who have important stories to share.
10 These are public plant breeders. These are seed
11 dealers, representatives of independent seed
12 companies, and especially farmers.

13 So as people come up to this
14 microphone, those who do have courage to share
15 their perspective, please remember that their voice
16 is a vote, and many of us are voting for a seed
17 industry that meets the diverse needs of farmers
18 and hopefully restores choice and rights back to
19 our American farmers. So thank you.

20 MATTHEW DILLON: My name is Matthew
21 Dillon. I'm with the Organic Seed Alliance. I'm
22 also a plaintiff in a lawsuit against the U.S. Department
23 of Agriculture, APHIS, for not following the
24 National Environmental Protection Act in its
25 deregulation of Roundup Ready attributes. I should

1 say victor as a plaintiff in this case. We're in the
2 remedy phase.

3 I do want to also thank you for these
4 hearings. As other people have pointed out, seed
5 in particular, I believe we need an additional
6 hearing that's not just focusing on concentration
7 but that spreads out to take on some of these other
8 issues that are inhibiting farmers' freedom to
9 operate, freedom to operate in their markets, and
10 those issues do include issues of contamination in
11 the marketplace and access to seed. I think it
12 needs to expand out to include USDA, APHIS, the
13 patent and trade office, the EPA, the congressional
14 oversight for those committees.

15 My understanding of the purpose of
16 having a competitive marketplace, the purpose and
17 the goal, is not to line the pockets of
18 shareholders and overpaid CEOs. The purpose of the
19 competitive marketplace is to serve the needs of a
20 diverse agricultural system.

21 Now, that's not happening, and that's
22 quite clear, particularly in seeds. We once had a
23 diverse seed system that was served in a dual role
24 by public and private plant breeders and seed
25 systems. Public and private systems worked

1 together in partnership and collaboration, but they
2 also competed. Public plant breeders released public
3 cultivars that competed against the private industry
4 and in particular served small and emerging markets
5 in the public sector varieties. That hasn't
6 happened.

7 And there's two things that's both
8 inhibiting the public and private sector from being
9 diverse. In the private sector, as many people
10 have pointed out, and I won't belabor the point,
11 the utility patent is the strongest tool that's
12 creating monopolies and inhibiting the development
13 of regional diverse seed companies that can be
14 competitive.

15 In the public sector the Bayh-Dole Act
16 needs to be examined. The Bayh-Dole Act changed
17 funding for our federal -- our public land-grant
18 institutions so that they are beholden to private
19 companies for their plant breeding dollars, their
20 research dollars, and we need to have an audit of
21 the Bayh-Dole Act to examine whether or not it is
22 actually doing its job or it's inhibiting
23 innovation and research. That needs to be done.
24 It needs to be done soon.

25 We need an industry that's really

1 going to be responsive to minor and emerging markets,
2 and you guys mentioned niche markets and organic
3 and local markets as niche. Well, organic is not
4 a niche market. It's the fastest growing market in
5 the United States. We're not hiding in the corner.
6 We're out in front, and we're innovative and
7 leading the charge.

8 American markets are supposed to be
9 about innovation. Organic has innovated. They've
10 taken risk. They've made investments. They've
11 been successful. But we need the protection and
12 the freedom to operate. We don't have access to
13 seed. The majority of organic farmers plant
14 conventional seed, are reliant on biotech companies
15 to lease our inbred lines for organic corn
16 production, and yet we can't even test these inbred
17 lines because of intellectual property rules to
18 determine if these inbred lines are contaminated.

19 So organic seed companies are planting
20 inbred lines that we know are contaminated with
21 biotech traits and further contaminating our
22 marketplace and hurting our customer base and our
23 credibility. So this has to be a bigger issue.

24 I applaud you for what you've done,
25 but we need to go a step forward and expand this

1 dialogue out. Thank you very much.

2 PHIL WEISER: Thank you.

3 SCOTT REMINGTON: I'm Scott Remington
4 from Winterset, Iowa. I've been a cattle producer
5 primarily, ever since I was 12 years old. I've
6 owned a cow before I even bought a car.

7 The issues I see here today, we've
8 talked a lot about life. The ownership of life is
9 really essentially the conflict here. And where I
10 came from in my experience, I've also worked as a
11 consultant for natural fertilizers and working with
12 the natural biological way. And I do know that
13 well.

14 And today I thank you for being here
15 because this is encouragement that we are actually
16 having dialogue, and we have a lot of points of
17 opinion here. But you know, on the simplistic
18 side, I won't repeat what other people have said
19 more eloquently than I could. We have a rigged
20 system. There's no question in my mind. And if we
21 looked at the history, history repeats itself. We
22 had to crush the corporations in the late 1800s.
23 It came back around.

24 But today it's at the most critical
25 time because now what we're doing in my expertise

1 with the soil is that we aren't even regarding the
2 life in the soil. We have had no talks about the
3 biological system that made Iowa soil as deep as it
4 was. It wasn't corn, beans, corn, beans, corn
5 beans. It was the tall grass prairie. And that's
6 not being just tree hugging and stuff. That is a
7 biological fact.

8 We've gotten away from the system of
9 agriculture, of sustainability so far, and as a
10 consultant and doing soil tests and working with a
11 lot of different clients over the years, one of the
12 greatest losses we're having is our top soil.

13 We cannot change -- we're a dog
14 chasing its tail with relying on biotech, and I'm
15 not against that. But my golly, do you have to really
16 be careful. And my testimony today is that we
17 can't even drink out of the wells safely in the
18 state of Iowa on our farms. We had to get rural water
19 because the nitrates and the pesticides and everything.
20 That's a fact.

21 And when we talk to people on the
22 coasts that don't know it and if we tell them that
23 we can't -- the majority of our wells in this state
24 aren't safe to drink, well, what kind of food are
25 we sending them?

1 So there's a little bit of twist, but
2 you know, I thank you for being here. But this is
3 life. This is all of us. Urban, rural, wherever
4 we are, and we're supposed to be the leader in
5 agriculture in the world? We're actually failing
6 very miserably. But, you know, everyone that came
7 here, I thank you very much, and thank you for
8 letting me speak.

9 PHIL WEISER: Thank you.

10 HARVEY HOWINGTON: My name is Harvey
11 Howington, and I own and manage a rice and soybean
12 farm in Poinsett County, Arkansas. The time to
13 talk is short, so I'll get right to the point.

14 Utility patents are a failed
15 experiment. The seed companies told us they needed
16 the patents to justify spending the research money
17 needed to advance this cutting edge technology.
18 They will tell us we need GMOs to feed a growing
19 world. I agree we need GMO technology, but the
20 products the companies are bringing to the
21 marketplace are not the products needed to feed the
22 world. They are all about company profits.

23 The companies will say average yields
24 go up every year. That is because farmers who
25 can't get the maximum yield out of the varieties

1 are not around next year. Hundreds of farmers go
2 broke every year, and rural America is drying up.

3 As for that promised research money, I
4 strongly suspect the companies are spending far
5 more on enforcing those patents than they do
6 developing varieties. The lawyers get most of the
7 money.

8 Seed costs have skyrocketed. We lost
9 the thing farmers and inhabitants of this planet
10 that is most precious to us, and that is the
11 intellectual property rights to our food.

12 As a Southern rice farmer, I would
13 like to comment about a practice that negatively
14 affects the price farmers get for their crop.
15 Large farmer cooperatives will swap rice with each
16 other and other large private rice farms to avoid
17 going to the marketplace to buy rice. They will in
18 the future pay them back in kind but for a reduced
19 price after the market has dropped.

20 This predatory market practice masks
21 demands for rice. It allows the companies to pay
22 less than market price for rice. We think it could
23 also be a violation of the Capper-Volstead Act for
24 the cooperatives to do this. I really appreciate
25 the opportunity to speak today.

1 PHIL WEISER: Thank you.

2 SAM CARNEY: My name is Sam Carney.
3 I'm a farmer from Adair, Iowa, fourth generation.

4 PHIL WEISER: Try again.

5 SAM CARNEY: There we go. Fourth
6 generation farmer. In 1998 and '99 I brought my
7 son into the operation. As you know what happened
8 to pig prices. My banker called me in. He says
9 "You have to quit this bleeding bread." He says
10 "We need to do some risk management with you."

11 So we've done risk management for the
12 past 10, 11 years, and it's worked very well for
13 us. It's made us a very successful business. I
14 don't want to lose those options. I don't want
15 those taken away.

16 I can take my pigs, I can contract
17 with a packer, and I get along very well, and I
18 don't necessarily use the same packer time after
19 time. I use variation of different packers. I
20 need those options. I have to provide my banker
21 with cash flows and make sure I have a risk
22 management tool.

23 In today's volatile markets and as
24 we've seen last year when H1N1 hit, and nobody was
25 going to predict that, we seen what the markets

1 did. We've got to have a risk management tool, so
2 please, I ask you don't take that away so my son
3 and I can keep operating. Thank you very much.

4 JOHN WEBER: John Weber, pork producer
5 from Dysart, Iowa. Just want to make a couple of
6 comments on what I've heard today. I've jotted
7 down a few notes.

8 While significant consolidation has
9 occurred, especially in the pork industry, I think
10 it's fully -- it's fully important to understand
11 the forces that brought this consolidation about.
12 I often think about this. There's a multitude of
13 forces that brought consolidation about. It wasn't
14 just the bottom line of the people doing it.

15 I think we can be very proud in this
16 country of the products that we're producing, the
17 food and the quality of the food we're producing
18 all the way through, and part of it is due to some
19 of the efficiencies that we have gained through
20 this consolidation process, so I don't want to
21 jeopardize our food production system not only for
22 us here in this country but for those abroad.

23 The other thing is that in my area and
24 throughout the Midwest, there are thousands of
25 producers that depend on these types of systems or

1 contractual arrangements. We happen to own the
2 pigs that we feed in our operation, but we are
3 definitely part of a production contract system,
4 and I've been in that system for 16 years, and it's
5 been very successful for me, and I know quite a few
6 other producers in our area, and I really, from a
7 producer, don't want to lose that ability. I know
8 several producers that would not be in business if
9 they hadn't had the ability to do that.

10 Our industry needs choices of market
11 systems because there are a wide variety of
12 independent producers as well as those
13 consolidated, and transparency is important to us.

14 I think we have to be very careful of
15 how we develop new programs or new regulations that
16 affect these systems because they will not only
17 affect producers, but they also affect consumers in
18 the price of food that they're going to pay.

19 One last comment I jotted down here at
20 the end, we talked a lot today about the age of the
21 agricultural producer and bringing youth into
22 agriculture. Just a comment I would like to make
23 on that. I think there's avenues that our
24 government could incentivize youth in agriculture.
25 I think it would be wise to help the 65 and older

1 group, whether it's through taxation or what it
2 might be, but to give them an incentive to bring
3 new producers into their operation rather than just
4 stepping out, and I think it could be done through
5 a tax structure very easily. So those are the
6 comments I'd make. Thank you.

7 PHIL WEISER: Thank you.

8 NICKI DALLMAN: Hello. My name is
9 Nicki Dallman, and I'm a certification specialist
10 and inspector for MOSA, Midwest Organic Services
11 Association. We're located -- we're an organic
12 certification agency located in Viroqua, Wisconsin.
13 We certify 1,400 organic farmers and producers in
14 11 states. And we also certify more organic dairy
15 farmers than any other NLP accredited agency.

16 I would like to express concern for
17 the potential release of GMO alfalfa and the threat
18 it poses to our organic farmers. The concerns
19 surrounding the release of GMO alfalfa are
20 different from those of existing GMO corn because
21 of the way in which alfalfa is pollinated.

22 As certifiers of organic products, we
23 help to ensure the organic integrity of corn crops
24 by determining the distance of the farmer's organic
25 crop from a neighbor's conventional crop, which

1 direction the wind blows, what barriers lay between
2 the two fields, and what time of year their crop
3 pollinates versus their neighbor's crop.

4 Likewise, our organic corn breeders
5 are able to maintain the genetic integrity of their
6 seeds by making sure those same barriers are in
7 place. Alfalfa, however, is open pollinated or
8 cross-pollinated, as opposed to corn which is a
9 self-pollinator, and alfalfa relies mainly on bees
10 to distribute the pollen. Alfalfa is also a
11 perennial versus an annual crop such as corn,
12 allowing the genetic makeup of a given field to
13 change from year to year.

14 The National Organic Standards Board
15 apiculture task force devised a report in 2001 for
16 farmers in which to certify organic honey. The
17 reports sought to define the forage zone of honeybees
18 which is established at a 1.8 mile radius from the
19 bee yard with an additional surveillance of up to
20 2.2 miles. This means that there are to be no
21 genetically modified crops within a 2.2 mile radius
22 of the source as it is believed that anything short
23 of that topography or terrain poses a threat to
24 that organic integrity of the honey.

25 There is no way a certification agency

1 could possibly enforce or monitor these guidelines,
2 nor do we believe we should have to.

3 Alternatively, this means that the organic
4 integrity of alfalfa crops will be jeopardized by
5 genetic contamination with the degree and
6 implications of the contamination unknown.

7 When a consumer purchases a product
8 with the USDA organic seal on it, they believe they
9 are getting a product that contains little to no
10 GMOs and was raised without any genetically
11 modified inputs, and they're willing to pay a
12 premium for that product.

13 This premium is what helps keep our
14 500 family-run organic dairy farms in business as
15 well as our farmers who sell organic feed and
16 our seed companies who breed organic seed. It is
17 our job as a certification agency to ensure the
18 organic integrity of their crops and their market,
19 and we feel that we are able to do that and to
20 stand behind the organic seal placed on these
21 products.

22 However, we cannot say that this will
23 be the case if GMO alfalfa is introduced with
24 nonregulated status, and that is why I'm here today
25 to express my concerns. Thank you very much.

1 PHIL WEISER: Thank you.

2 BRAD WILSON: Brad Wilson, Iowa family
3 farmer. You know, I feel like I've heard quite a
4 few political speeches here on the panels, and one
5 of the things they were saying is about how much
6 they want to hear me. And I listened to that all
7 day long. I don't necessarily see them here now.

8 You know, I'm out here in this line,
9 and I'm in competition to speak. We have a
10 competitive market out here but little fringe.
11 That's a little bit that's left, a little bit of
12 time left. But up here we have a protected market
13 where they got to speak and just reminds me that
14 you're treating us, you at DOJ, USDA, are treating
15 us the same way Monsanto treats us. And so I think
16 we need to change the process next time.

17 You can have debates where you put us
18 up against your people. I think we can beat your
19 people and have a series of debates if you get --
20 if you have high status, you don't get to move on
21 just because you have high status. If you get beat
22 because you don't have the competence, then we get
23 to move up, and we'll be the ones that end up in
24 Washington. If you have that debate, we'll win
25 that debate, and you should be giving a chance for

1 that truth to come out.

2 Now, you know, we kind of had a
3 heads-up on some of this here. When Vilsack was in
4 Iowa, he wrote the nuisance lawsuit protection
5 provision for House Bill 519, the hog factory bill,
6 and so that got a lot of things going here, getting
7 legal protection for that kind of change.

8 We have also as Governor -- that was
9 as a legislator. As Governor, he pushed the Iowa
10 2010 Report. Well, 2010 is here. The 2010 Report
11 in Iowa said we want Iowa to be the life sciences
12 capital of the world by 2010. Now, they probably
13 have copycat reports over in Missouri and Minnesota
14 and all these places. They're saying they want to
15 be the tough -- well, interpret it but the biggest
16 ag complex in the world, so it's a concentration
17 effort that came from that.

18 Now, you go to the Iowa 2010 Report,
19 Volume 2, they have from the hearings all of the
20 people from this kind of a line here, and those
21 people said we don't want that concentrated system,
22 but they weren't heard and didn't get in the final
23 report, and that's what I'm kind of hearing here.

24 Now, you know, Lewis Mumford, he's the
25 great writer about technology and mega-techniques,

1 and he taught us that mega-techniques is an
2 authoritarian technique, and as you hear the things
3 said out here, it's very clear that we're already
4 in the effects of these authoritarian measures that
5 are coming down at us, and if you don't understand --
6 for example, Iowa State University, the land-grant
7 people, the economists, if they don't understand
8 that the technology that we're talking about here
9 is mega-techniques -- and if you don't know how that
10 techniques works, that it is authoritarian, then you
11 don't understand technology in agriculture today and
12 in many other sectors of the economy, and I didn't
13 hear anybody up here that understood that.

14 Now, you know, we got -- maybe we got
15 some congressional people left. I don't know. But
16 I'm used to speaking when everybody has gone home,
17 including the press.

18 UNIDENTIFIED MALE: We're still here.

19 BRAD WILSON: In Congress, we have a
20 farm bill where they on purpose have lowered the
21 price floor down, down, down, starting in the '50s
22 to today. And then they lowered it to zero. Now,
23 what that did was that gave cheaper and cheaper and
24 cheaper grain to the big corporations. They talk
25 about farm subsidies because you're losing so much

1 money every year that you get a subsidy, but these
2 corporations didn't lose any money to go get their
3 bigger benefits. And so here we have that, and
4 that fuels this concentration. That's all a part
5 of the system fueling this concentration. That's not
6 the kind of reasons that were given on the panel
7 today. That's a political reason where they chose
8 that.

9 You know, you go back to the CED
10 report of 1962 where they said "We want to get rid
11 of one-third of the farmers in five years." And so
12 that's an authoritarian statement. And they
13 said -- I heard all this, you know, talk from your
14 panels about youth. We want our farm youth. The
15 CED report said "We want programs to get rural
16 youth to move away," and we've been dealing with
17 that, with the NFO and all these groups, for
18 decades.

19 Okay. I'll wind this up right now.
20 Right here. Yeah. The ERS data shows that we lost
21 money. I've summed up the five big crops in the
22 farm program and then barley, oats, and grain
23 sorghum. From 1981 to 2006, you put in the acres
24 with the net per acre, actually, and you sum those
25 up, and we lost money every single year except

1 1996.

2 So the policy of the United States was
3 that we will export our grain for 25 years at below
4 our costs, that the United States will lose money.
5 Same thing. You know, we've got 40 percent of the
6 market. We'll raise our price. Now, that's an
7 authoritarian system that says the United States
8 will lose money so that these big corporations can
9 benefit all around the way.

10 You know, I really can't thank you for
11 this process.

12 PHIL WEISER: Thank you.

13 GEORGE NAYLOR: Hi. My name is George
14 Naylor. I'm a farmer from Churdan, Iowa, past
15 president of the National Family Farm Coalition.

16 I think if I'd have been to this
17 meeting 20 or 30 years ago, I'd start out by saying
18 the same thing. Basically you're closing the door
19 after the horse is out of the barn. And actually,
20 you're closing the door after the horse thieves
21 have stole the horse.

22 These horse thieves have stolen our
23 family farm system. They've stolen the
24 biodiversity of Iowa. Now they're stealing a
25 decent health care for all of us. They're stealing

1 our -- the future of our democracy and the future
2 of our children.

3 There's grave consequences for what
4 these big corporations do with their economic and
5 technological power. Monsanto -- and this is
6 really the technology we're talking about here,
7 genetic engineering. Okay. Roundup Ready
8 technology is being used to destroy biodiversity in
9 Brazil and all around the world, and now Monsanto
10 is promising to create corn as resistant to drought
11 and resistant to salty soil so as to feed poor
12 people around the world.

13 Well, the truth of the matter is that
14 technology will be used to plant vast areas of corn
15 from horizon to horizon, destroying biodiversity on
16 arid land that never was used to produce crops
17 before.

18 And so the United States is giving
19 Monsanto the right to put this technology out
20 there, to let their genes go all around the world,
21 and to somehow certify that it's okay for the
22 environment when we know that there can be no such
23 guarantee. We can't guarantee that it's okay for
24 the environment here in Iowa, let alone in Mexico
25 and South America and Africa and whatever. So the

1 power that you, that we, give to Monsanto to do
2 what they do, like I said, has grave consequences.

3 Now, personally I was in a lawsuit. I
4 was a plaintiff in a lawsuit with the president of
5 the Iowa Farmers Union, Chris Peterson, 11 years
6 ago where we brought a suit against Monsanto.
7 Chris's part of the lawsuit was explicitly an
8 antitrust lawsuit. We said that they had bought up
9 many of their competitors with the intention of
10 monopolizing the industry. And let's see. Well,
11 anyway, it was an antitrust lawsuit. I'm sorry. I
12 forget the other part of it.

13 But the funny thing is that after the
14 judge had dismissed our antitrust lawsuit, it came
15 out in the New York Times that this judge had been
16 a lawyer for Monsanto, and he should have recused
17 himself, but he didn't.

18 Okay. This was in an article by David
19 Barboza in January 6th and 9th of 2004. David Barboza
20 also presented plenty of evidence in his articles
21 that the CEOs of these major corporations, Pioneer,
22 Syngenta, Monsanto, got together and agreed to
23 charge a uniform price, a price higher than any of
24 them had to charge. Okay? Which was against the
25 Sherman Antitrust Act. Okay.

1 But since the judge said that we
2 couldn't have a class-action lawsuit and we could
3 proceed for just one farmer, we couldn't afford to
4 go ahead with the lawsuit.

5 Now, I'm asking you, where was the
6 federal government in trying to enforce the Sherman
7 Antitrust Act, and is there any chance that you in
8 your positions, this administration, can try to
9 enforce the Sherman Antitrust Act based on their
10 activity to monopolize the market back then?

11 PHIL WEISER: I would just reiterate
12 what Bill Stallings said, and Bill, Mark Tobey, and
13 I are here if folks want to talk afterwards. If
14 you have allegations or information, we want to
15 hear it.

16 GEORGE NAYLOR: Okay. Well, yeah.
17 You look up the articles by David Barboza in the New
18 York Times on January 6 and 9, and you can read
19 about it.

20 PHIL WEISER: Thank you very much.

21 MARCIA ISHII-EITEMAN: Good afternoon.
22 I am Marcia Ishii-Eiteman. I'm the senior
23 scientist for the Pesticide Action Network, and I
24 would principally like to share with you the
25 results of a landmark International Assessment of

1 Agriculture that came out last year.

2 This is the International Assessment
3 of Agricultural Knowledge, Science, and Technology
4 for Development for the IAASTD report, was authored
5 by over 400 scientists and development experts from
6 over 80 countries, two public and transparent
7 peer-reviewed processes, and has been fully
8 approved after an intergovernmental plenary by
9 58 governments. This was just published last year.

10 I'll give you a bit of information
11 about this afterwards, but this landmark report
12 already examined in detail the successes and
13 shortcomings of our food and agricultural systems in
14 the U.S., in North America, and around the world.
15 And it also looked explicitly into the kinds of
16 issues we've been talking about today around
17 competition, the effects of corporate consolidation
18 on our food and agricultural systems, and the
19 impacts of that on farmers, farm workers, consumers,
20 the environment, and so on.

21 So I would just like to draw out a
22 couple -- very few of the key findings. One we've
23 heard a lot about today about the contribution of
24 biotechnologies to, quote, "feeding the world." And
25 actually, this report examined biotechnologies and

1 a full range of agricultural technologies in great
2 detail, and one of the key findings is that, in
3 fact, the food prices and the hunger and
4 malnutrition you're seeing in the world today, which
5 is enormous, is not due to a lack of access to the
6 GMOs and the biotechnology that Monsanto is bringing
7 to us and other corporations are bringing to us but
8 rather to poverty and lack of access to healthy and
9 affordable food.

10 So there are money countries,
11 including our own, that are producing massive
12 amounts of food. The issue is not a need to
13 increase production but to see that distribution is
14 far more equitable.

15 The other thing that the report found
16 was that widespread adoption of and, in fact,
17 particularly patenting and corporate control over
18 the more modern and recent technologies has very
19 directly benefited transnational corporations and
20 the wealthier groups, and not so much the small scale
21 farmers and family farmers.

22 Also, some of these technologies have
23 yielded some significant short-term benefits, but
24 they have had significant and growing costs on the
25 environment and our ability as a community and

1 society to maintain clean soils, clean water,
2 functioning local -- vibrant local economies and
3 the health of our families and of future
4 generations.

5 And so the question is not so much,
6 you know, can, quote, unquote, "sustainable" or
7 "organic" or "less heavily based on inputs," can that
8 kind of agriculture feed the world, but can the kind
9 of agriculture that we're seeing based on these
10 corporate control technologies feed the world? And
11 the answer to that last question is no. The direction
12 we are going in is not sustainable. Business as usual
13 is not an option.

14 And finally, just to say the report
15 also noted that in North America in particular,
16 growing market concentration in multiple
17 agricultural sectors has now paved the way for near
18 total control of our region's food and agricultural
19 systems by the transnational corporations, and has
20 led to a dramatic reduction in fairness and
21 competition, the things that many of the farmers today
22 are talking about.

23 So the ways forward, the report really
24 points towards enforcement, establishment of much
25 stronger antitrust mechanisms and rules, things

1 that you are investigating, stronger competition
2 policies including regulations that look at global
3 and international competition, and I would
4 encourage you to go from one of the suggestions in
5 the report about cooperating with other governments
6 to establish an international review mechanism that
7 would look at the transnational effects of
8 corporate control over inputs and over the food
9 system.

10 So far just to say that, you know, I
11 know some of these things may seem like out of the
12 purview of the Antitrust Division or out of this
13 particular investigation, but that is why we and
14 all of our members would like to call on the
15 Department of Justice and the Department of
16 Agriculture to broaden the scope of this
17 investigation.

18 This is an important beginning, but
19 really, in order to establish the vibrant local
20 food systems that are what will save family farmers
21 and will bring this country back on its feet is
22 going to require a much deeper investigation. Our
23 agricultural science is on the line. Good
24 governance is at stake, and human health is on the
25 line as well, and so we put forward this request

1 that you work together and bring in Congress as
2 well to really broaden the investigation in a
3 thorough and --

4 PHIL WEISER: You'll be submitting
5 your report to our website also?

6 MARCIA ISHII-EIDEMAN: Yes.

7 PHIL WEISER: That would be great.

8 Thank you very much.

9 UNIDENTIFIED MALE: Are you still
10 using the number system?

11 UNIDENTIFIED MALE: People stand up --

12 UNIDENTIFIED MALE: Because in the
13 interest of fairness --

14 PHIL WEISER: I'm guessing --I had
15 assumed the people that had come up had been called,
16 but I take it people now are not the numbers we've
17 called? Is that the observation? So why don't we
18 go -- we'll let you speak, and why don't we go for
19 the last numbers. Pick up five more numbers. I
20 assume everyone took a number, so read the numbers
21 here.

22 518, 484, 502, 480, 520. Those people
23 could line up if they're here. In the meantime,
24 we'll let you go ahead.

25 SIENNA CHRISMAN: Thanks. My name is

1 Sienna Chrisman. I'm here from Why Hunger, formerly
2 World Hunger Year in New York City. I'm also with
3 the U.S. working group on the food crisis.

4 I work with, among other people, many
5 low-income communities in New York and around the
6 country and around the world, and I'd really like
7 to make a point on -- a couple of points on cheap
8 food.

9 We've heard a lot about that we need a
10 lot of these technologies, and we need this current
11 system of agriculture that we have now to be able
12 to produce the volume that we need to feed a hungry
13 world.

14 My first point is that in the food
15 crisis a year and a half ago, when prices for food
16 were spiking and there were riots around the world
17 and farmers were having a really tough time with
18 inputs, the top three grain producers had price --
19 showed price increases at that point in that period
20 of 67 to 89 percent. So they were making money at
21 the same time that both farmers and the consumers
22 were really hurting.

23 My second point is that yes, there is
24 cheap food that's available around the country and
25 in low-income areas, both urban and rural, but the

1 food that's available, I don't know if you've been
2 to a lot of low-income areas around the country,
3 rural and urban. A lot of it can really barely be
4 called food. It's calories, but that's not providing
5 health to anyone.

6 And that brings me to my third point
7 that cheap food is not really cheap. The
8 externalities that come with our cheap food are
9 very real, and we're going to have to pay them at
10 some point sooner or later, whether that's in our
11 soil quality, on which all of our food is growing,
12 in our rural economies, and in our health.

13 One in three kids, I'm sure you know,
14 born after 2000, it's predicted to develop
15 diabetes. It's unbelievable to me that we're able
16 to talk about health care and not be talking about
17 the kind of food that we have available in our
18 communities.

19 Many consumers are losing out in this
20 system just as much as farmers are. And as Marcia
21 said, as other people have said, there really are
22 other ways to explore to feed the world. Small and
23 mid-scale, locally-based, regionally-based
24 agriculture is not just a niche thing. It needs
25 the opportunity to compete. It needs the

1 opportunity to scale up, to have processing
2 infrastructure, as we have heard about. It really
3 needs the ability to have a level playing field and
4 be able to be another real option.

5 And finally, I'd just like to say I
6 really appreciate that in December we'll be having
7 a panel looking at and hearing from consumers, and
8 I'd like to recommend that we have another panel at
9 some point during the year to also hear from more
10 voices of consumers because this is about our food
11 system and who controls our food system, and we all
12 eat, and we all really need to be able to have the
13 opportunity to speak out on this just as much as
14 the producers have. Thank you.

15 PHIL WEISER: Thank you.

16 LARRY SCHRODER: I thank you for
17 having this today. I'm Larry Schroder,
18 diversified -- we have a diversified farm in
19 northeast Iowa, crops, dairy, hogs, and beef.

20 I would like to address -- reinforce
21 several great points I think we've heard today.
22 We've heard a number of great ideas. I'd like to
23 disagree a little bit with what was said before. I
24 know the horses may be out of the barn, but we can
25 get them back in again. We can't get in front of

1 the train, get run over, but maybe we can turn it a
2 little bit.

3 We are a resilient people, a resilient
4 economy, and I think if we make the system halfway
5 fair and level playing field, as Secretary Vilsack
6 has said, we can change this. I think most
7 important point we've heard today is about the
8 retail margins. I believe the retailers have too
9 much power. We can all be concerned about the
10 processors, and I am, but the retailers have taken
11 an ever greater share of the retail dollar, and
12 that has hampered our processing and especially our
13 production sectors.

14 By taking those extra margins, they've
15 taken away money for innovations and strength in
16 our sectors. By expanding their margins in time of
17 up markets, and by lagging down markets, they do
18 two things. They keep their profits for a longer
19 time, and we all know that consumers have a demand
20 that's influenced somewhat by the prices, and so as
21 they keep those prices higher than they should be,
22 they tend to stifle demand, shorten the up cycles,
23 and lengthen the down cycles by increasing
24 inventories and keeping those inventories longer
25 than they should have been.

1 Second, we do have too much
2 consolidation of the packing industry. We're
3 greatly affected by that in our pork sector. We
4 are still part of the open market. We are an
5 independent farrow-to-finish operation, so we are
6 rare indeed.

7 I know there are reasons for
8 contracting and so forth, but I agree with Chuck
9 Wirtz that we need to make an effort to increase
10 that. Livestock ownership of packers should be
11 limited to 10 to 14 days prior to slaughter. The
12 supply contracts -- and I agree with what was said
13 several times. When they have 90 to 95 percent of
14 their supply lined up, why would they ever bid hard
15 for that last 5 percent? They would rather let
16 those slots stay empty rather than increase the
17 price on the rest of the 95.

18 Sustainability. We've all heard that
19 term a lot, but I think one point that's been
20 overlooked is that sustainability needs margins in
21 an industry, enough profits from within to renew
22 itself for facilities, systems, and most
23 importantly people. Shown a reasonable chance to
24 make a decent living, if we give them a level
25 playing field, our young people will come back.

1 PHIL WEISER: If you can wind up.

2 LARRY SCHRODER: At present I believe
3 we should look at 1031 tax exchanges. They
4 encourage excessive investment that isn't needed
5 many times. As a dairy farmer, I'm grateful for my
6 cooperative, Dairy Farmers of America, and our
7 sister co-ops throughout the country that help to
8 represent us and strengthen our position in the
9 marketplace and public policy.

10 I wish, frankly, that a similar effort
11 was viable -- viable for our hog and beef enterprises,
12 and I urge you to help defend and strengthen
13 Capper-Volstead. I believe that we need more public
14 investment and research in seed, especially
15 conventional varieties, forages and sustainable
16 livestock in farming marketing systems. Thank you.

17 PHIL WEISER: Thank you.

18 ANGIE TAGTAL: Good afternoon. My
19 name is Angie Tagtal, and I'm a registered
20 dietitian here in Iowa working on public health and
21 food access issues, and I want to remind us of some
22 natural laws in this discussion.

23 Natural Law No. 1, food is a basic
24 human need. We're talking about food. Law No. 2,
25 food is our source of health and well-being. And

1 Law No. 3, those who control our food supply
2 control societies, and even though Wendell Berry said
3 that eating is an agricultural act, health is an
4 agricultural act. Nourishing society begins with
5 seed, soil, water, and sunlight.

6 Diverse seed grows diverse crops.
7 Diverse crops cultivate diverse jobs resulting in
8 economic vitality, especially in rural areas.
9 Diverse crops puts diverse foods on our plates, and
10 diverse foods are the key to not only healthy
11 individuals but families, our farms, and
12 communities.

13 The vertical and horizontal
14 consolidation and concentration within any sector
15 of the food system has and will continue to limit
16 our access to foods that promote health. Having
17 diverse foods makes eating healthful foods easier
18 choices. This thereby can make an impact not only
19 on the health of eaters but especially children and
20 future generations.

21 Seventy years ago there were more than
22 34 different crops that were grown in Iowa farms,
23 half of which were fruits and vegetables. Today
24 there are only ten crops that are grown on Iowa
25 farms, none of which are fruits and vegetables and

1 many that are not even designed for human
2 consumption. In fact, less than .1 percent of
3 farmland in Iowa grows foods that promote health,
4 primarily fruits and vegetables.

5 But a paradox exists today that
6 30 million acres in Iowa are devoted to
7 agriculture. Yet 12 percent of Iowans, and even
8 more Iowans today than a few years ago, do not have
9 regular access to food. As a result -- and it's
10 estimated that about 80 percent of the foods that
11 appear on Iowans' plates are actually brought into
12 Iowa.

13 As a result of this corporate control
14 of Iowa's food system, Iowa agriculture doesn't
15 even feed Iowans. This is a national security
16 issue. As eaters, we all should share
17 responsibility and ownership of the food system as
18 this would assure that all -- we all have regular
19 access to safe, nutritious foods that not only
20 support our health and well-being but for future
21 generations as well. Thank you.

22 PHIL WEISER: Thank you. I know we're
23 a little past our ending time, and we're down to the
24 really hard core, but I want to ask a couple more
25 people if they're still here, I figure two

1 more. 394 and 405. And then after that, we'll
2 wind it up.

3 Reminding you all this is the
4 beginning of a process. We're getting a lot of
5 great ideas. We really appreciate you staying with
6 us. Thank you, sir.

7 LARRY GINTER: My name is Larry
8 Ginter. I'm a retired family farmer. I grew up in
9 the '40s when agriculture was truly sustainable,
10 not like today. Truly ethical, not like today.
11 Mr. Brad Wilson was right. We need a further
12 debate, and when we have the foxes guarding the
13 chicken coop, we have big problems.

14 Secretary of Agriculture Vilsack
15 carried water for the giant hog factories. Our
16 Lieutenant Governor, Patty Judge, carried water for
17 the vertical integrators. Governor Branstad who
18 wants to be governor again carried water for the
19 vertical integrators. Folks, we have a problem
20 with ethics.

21 But I'd like to talk about a Catholic
22 priest who once felt that breaking the Sixth
23 Commandment, thou shalt not steal, if you could
24 break that commandment and rob from your friends
25 and rob from other nations, you would probably

1 break all the other commandments, and you would
2 take your nation down into perdition.

3 We never talked about the ethics of
4 our trait laws. We produce corn on the cheap.
5 Family farmers aren't being paid ethically at the
6 farm gate. Giant hog factories like Smithfield
7 gobbled up that cheap grain and profit with 2 to
8 \$3 billion since 1994 to 2001.

9 We send that cheap corn down into
10 Mexico, and we drive millions of family farmers --
11 we disrupt their marketplace and drive millions of
12 family farmers off the land. That's ethical? But
13 that's business as usual for Smithfield. And then
14 they get cheap labor. That suits them fine.

15 And then the Department of Justice
16 allows Smithfield to buy Premium Standard Farms.
17 We have a problem. You ought to be ashamed of
18 yourselves for allowing this to happen.

19 I got driven out of the hog business
20 along with thousands and thousands of family
21 farmers in the state of Iowa because of vertical
22 integration.

23 Monsanto can now patent seeds that
24 through eons of evolution? They didn't create the
25 seed. Nature did. Well, I'm going to shut my

1 mouth now, but we better be damn sure what we're
2 doing because what we're doing is wrong, mighty
3 wrong.

4 Smithfield is operating in Poland,
5 drove 60 percent of those family farmers out of
6 business. They're operating in Romania, drove
7 80 percent of those family farmers out of business.
8 They're operating in Brazil driving thousands of
9 those family farmers out of business. And they're
10 not a monopoly? Let's get real. I'll quit now.

11 VERN TIGGES: I'm Vern Tigges. I'm a
12 small farmer from Carroll, Iowa. I'm also
13 president of Iowa Citizens for Community
14 Improvement, a small advocacy group here in Iowa
15 that seeks all avenues of social justice. And
16 social justice is what it's all about.

17 The corporations have gotten all the
18 facets of our economy governed, including our
19 politics. And they do this -- they are in control
20 of our economy. They control our politics because
21 they can. And all laws and all policies are
22 created by man and those who can influence them,
23 and that is the problem where we stand today.

24 We don't have social justice. We have
25 policies and laws that are created by man and the

1 corporations and the people that can influence
2 those people. So it's not a fair world as it
3 stands right now, and that's why we are in this
4 dilemma now. It's not only ag. It is all facets
5 of our economy, including banking, all the
6 financial sectors.

7 Last night I was at a workshop, and I
8 asked -- and I don't know if I can do it here. I
9 asked all those who have raised livestock prior to
10 1995, please stand up. Prior to 1995, all those
11 who raised livestock. Okay. Stay standing. All
12 those who had ag-related jobs in any -- any sector
13 of agriculture before 1995, please stand up. Okay.
14 Out of all these people -- and I'm sure there's
15 many people that left. Out of all these people,
16 who have lost their job or have gotten out of
17 livestock production since 1995, please sit down.
18 That doesn't leave very many standing, does it?
19 The proportion was a lot larger last night. Last
20 night half of the people stood up, and when I was
21 finished, there were three people standing.

22 So you see, it is the corporate
23 structure that took over the agriculture in the
24 last 15 years that put these people out of
25 business, caused people to lose their jobs.

1 And it is for that reason I'm not
2 calling on -- I'm calling on you to go ahead with
3 this antitrust procedure because all of us eat, and
4 all of us have to have a job, and we all have to
5 provide for our families. So I'm asking those all
6 in favor of going ahead with this procedure of
7 antitrust, please stand up. This is the picture I
8 wanted you to see.

9 PHIL WEISER: Thank you. I appreciate
10 that. We have one last person we have called and
11 want to give a chance to speak and then give people
12 a chance to go home. Thank you for staying with
13 us. Yes, sir.

14 UNIDENTIFIED MALE: I actually do have
15 a number.

16 PHIL WEISER: No. I know. You as
17 well were called?

18 RANDY JASPER: Yeah.

19 PHIL WEISER: That's fine. Two more
20 people. Then --

21 UNIDENTIFIED MALE: Thank you for this
22 opportunity and your patience. Just a little
23 different twist on some of this. I'm a farmer from
24 Harlan, Iowa. I have a written statement.

25 Larger factors and violations of

1 antitrust laws play into the seed industry's
2 assertion that biotech seeds are in the best
3 interest of feeding the world now and in the
4 future.

5 I believe that accusations that
6 organic and conventional crop breeding cannot do so
7 are scientifically flawed. It ignores the
8 scientific data for many long-term agronomic
9 studies from both private institutions such as the
10 Rodale Research Institute and from public land-
11 grant institutions such as Iowa State.

12 These studies show that natural
13 cropping systems can produce similar yields while
14 reducing fertilizer and pesticide usage, decrease
15 energy usage, decreased CO2 emissions, are done
16 with cheaper production costs and greater economic
17 efficiencies.

18 Then at the same time, this bias from
19 these companies insists that its ability to feed
20 the world's hungry in the future can only be
21 accomplished by the commodity large scale export
22 model that removes farmers from their lands and
23 communities all over the world.

24 I recently spent 11 days with my son
25 who's an agricultural worker in the Peace Corps in

1 Honduras, and I saw firsthand that these people
2 need access to markets and help in green farming
3 practices. And I was appalled to learn from my son
4 that four out of five supermarkets in this country
5 of seven million in Honduras are controlled by
6 Walmart.

7 I've been an on-farm researcher, and
8 I'm a biologist and a farmer. I've been an on-farm
9 researcher for 23 years now in cooperation with the
10 Practical Farmers of Iowa and Iowa State University.
11 I've been an organic farmer for 27 years and a
12 certified one for 16 years. I can now grow 200 bushel
13 corn and 65 bushel beans on a consistent basis. I
14 couldn't do it after the first 10 years, but now after
15 27 years, I can do it.

16 I can do it because of being a
17 diversified crop and livestock farmer in the best
18 history and tradition of our state and our Midwest.
19 And now I'm doing it with less expensive
20 conventional nonbiotech seeds. We are now reaping
21 the benefits of soil-building crop rotations,
22 animal manure and compost for soil and plant
23 health, and we are producing a more nutrient-dense
24 food for better human nutrition.

25 The takeover of small plant breeding

1 companies by just three or four companies has
2 diminished our seed genetic diversity and has
3 greatly eroded our public institution's ability and
4 responsibility for creating new seeds that serve
5 the public good. Thank you.

6 PHIL WEISER: Thank you.

7 RANDY JASPER: My name is Randy
8 Jasper. My son and I operate a dairy and grain
9 farm in southern Wisconsin, and you were
10 wondering -- I'll keep this short, by the way. One
11 of the things you was talking about what you can
12 do, the DOJ right now has an investigation against
13 Dairy Farmers of America for price fixing. That
14 would be one thing you could do, is proceed on that
15 one.

16 Also, we're looking forward to the
17 dairy -- I'm about 60 miles from Madison. We're
18 looking forward to the hearing there. Thank you.

19 PHIL WEISER: Thank you. A few
20 closing remarks. There is a lot of road ahead.
21 We've got our work cut out for us, whether the
22 metaphor is the cow is out of the barn, down the
23 street, on the rail, whatever, we're going to try
24 to do our best to find it, and we are going to look
25 at this issue from a number of perspectives, and

1 this is the first of five workshops working
2 together with USDA. This is unprecedented, and
3 this is the sort of engagement that I think makes
4 good government.

5 Having a chance to hear from farmers,
6 the academics who spoke for us today, many from the
7 local area, businesses, and other experts as well
8 as enforcers is going to help us learn more about
9 this industry and be more effective. It's all
10 going to be part of this record as will further
11 comments that keep on coming. We really hope folks
12 who have commentated continue to engage, look at
13 the transcript, share reflections, share with us
14 your ideas.

15 We're going to release the proceedings
16 from today, putting it on the website as well. The
17 video form will be available, and we want to make
18 sure that this can lay the groundwork for further
19 discussions.

20 Our next workshop is going to be in
21 Normal, Alabama, on May 21 addressing the poultry
22 industry. As someone just mentioned, it will then
23 be June in Madison.

24 We are so appreciative to have all the
25 officials join us today, many of the elected

1 officials here from Iowa as well as our Attorney
2 General, Secretary of Agriculture, a number of
3 state attorneys general joined us. This shows you
4 the level of commitment of a lot of folks who are
5 getting their arms around these issues.

6 It's also worth noting that an event
7 like this doesn't happen without a lot of people
8 working very hard. John, do you have a chance to
9 maybe acknowledge some of those people?

10 JOHN FERRELL: Yes. I would like to
11 thank everyone at the FFA Enrichment Center and the
12 Des Moines Area Community College that have spent
13 many hours helping prepare for this successful
14 event today. I would like to thank Robert Denson
15 who's president of DMACC for allowing us to use
16 this facility here today. I don't think when we
17 called him back several months ago he knew what he
18 was getting into, but we thank him for helping us
19 today.

20 Finally, we would thank you. We thank
21 everyone who came here today, for participating in
22 this event, by providing written comments in
23 advance, by providing public comments today, or by
24 simply just attending the event and engaging in
25 conversations with us in hallways and during

1 breaks.

2 We have benefited from the variety of
3 experience and opinions that you all have brought
4 to this workshop. We also thank the numerous
5 panelists who have made themselves available, who
6 have taken the time to travel here today, and
7 they're providing extensive involvement. And
8 again, we thank you for all attending. Thank you.

9 PHIL WEISER: Have a nice weekend.
10 Thank you.

11 (Hearing concluded at 5:50 p.m.)

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C E R T I F I C A T E

I, SueAnn Jones, Certified Shorthand Reporter and Notary Public in and for the State of Iowa, do hereby certify that the foregoing is a true and accurate computer-aided transcription of the hearing as taken stenographically by and before me at the time and place indicated on the title page;

That I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am not financially interested in the action.

Dated this 16th day of March, 2010.

SUEANN JONES, CSR, RPR