

#1 Link to U.S. Labor Secretary Hilda Solis; National Workers Memorial at the National Labor College

#2 Links to "The Destruction Of Cal/OSHA/EPA And The Case Of David Bell"

#3 Link to: ARTICLE: "CAL OSHA: GOING DOWN THE TUBES?" by: Lawrence-MD  
*Sandra Trend*

#4 Links to: June 17, 2009 CALIFORNIA DEPARTMENT OF INSURANCE,  
Workers" Compensation Fraud Commission – Testimony of Sandi Trend

#5 Links to: September 9, 2009 CALIFORNIA DEPARTMENT OF INSURANCE,  
Workers" Compensation Fraud Commission – Testimony of Sandi Trend

December 7, 2009

The Honorable Hilda L. Soils, Secretary of Labor  
United States Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

Dear Secretary of Labor, Mrs. Solis,

Your concerns for the injured worker is most uplifting and I must say, "it's about time"

In your remarks of Tuesday, April 28, 2009; National Workers Memorial At the National Labor College you said:

• *The government has a fundamental responsibility to protect workers from unsafe work places. Some argue that inspection, enforcement, and regulation are "inconvenient," but as we stand here today we're reminded of exactly what is at stake when we put ideology ahead of common sense regulation. When it comes to workplace protection, workplace health and workplace safety, let me be clear: the Labor Department is back in the enforcement business.*

• *But there are a few [businesses] that do not make worker safety and protection a priority. There should be no controversy around the simple idea that workers ought to be able to come home from work safe and sound.*

• *Over the last few years, we've seen an ideological response to worker safety and health that deemphasized enforcement and standards. And recent reports on the effectiveness of the previous administration's approach make clear that it's time for a change in direction.*

• *Under my watch, enforcement of our labor laws will be intensified to provide an effective deterrent to employers who put their workers' lives at risk. OSHA and MSHA will be about workers — not voluntary programs and alliances. I take very seriously the report issued earlier this month by the Labor Department's Inspector General which found insufficient focus on making workplaces safer. The failings are unacceptable and will not be tolerated. Can we do better? Si se puede!*

• *So long as I am Secretary of Labor, the Department will go after anyone who negligently puts workers lives at risk. We are creating a new program, called the Severe Violators Inspection Program, which will ensure that workers are protected from negligent companies that don't take worker safety seriously.*

At last, there is someone in an official capacity who really cares about injured workers Mrs. Solis, and I thank you from the bottom of my heart.

The Workers' Compensation System within the United States is failing the injured worker/s beyond belief. In fact, the misdeeds of an unsafe employer's are hidden under the umbrella of protection by the very system that is to assure an injured employee their United States Constitutional civil, human and judicial rights; the workers' compensation system. These misdeeds are never known to the past, present and future employees as well as the public. This was the case for my son, David Bell, and as I have learned, the case for injured workers' throughout the entire United States.

Before I go further, I wish to give you a very brief description of what had happened to my son, David. David was exposed to (and became ill from) known and unknown hazards in the workplace environment in the research and development biotechnology company, Agraquest Inc. of Davis, California; while he worked as an Assistant Researcher (microbiologist). He had only been on the job 5 months and 9 days before his nightmare began.

Within seven days of initially seeing an immediate care medical Doctor, after being sick for days with purulent bloody pus draining from his nose and a fever [which then led to the left half of his face and teeth becoming numb], my son was scheduled for an emergency sinus surgery for a severe sinus infection. This was the 1st of the 4 major sinus surgeries [the last in 2006] with countless in-office sinus procedures. He lost the ability to produce the required amount of B-cells for an intact immune system and was hooked up to an IV pump in the hospital receiving IV immunoglobulin infusions every 28 days for 3 years.

There have been nineteen (19) microorganisms [both fungi and bacteria] that have either tested positive in my son's blood serum and/or shown positive in his nose and/or sputum cultures and/or shown levels of positive to HIGH POSITIVE in Environmental IgG testing; showing levels of exposure. *Each and every one of these microorganisms testing positive in my son can be traced back to Agraquest's research, patents (and/or patents that Agraquest scientist's are listed as "inventor/s" on other company's patents) and/or Agraquest's products.* Throughout the years my son has continued to have sinus infections and has been placed on numerous antibiotics and anti-fungals as well as other prescriptions.

Agraquest has not only denied any responsibility with regard to my son's occupational illness; they have concealed the fact; it was because of the unsafe workplace environment that made him ill in the first place due to exposure to known and unknown health hazards. This concealment was further extended over to the California workers compensation system in the form of perjury and fraud.

Mrs Solis, you also spoke of OSHA's role in protection of the American worker at National Workers Memorial At the National Labor College:

•American workplaces have become much safer since the Occupational Safety and Health Act of 1970 established OSHA. The shocking number of injuries and deaths on the job that we saw almost 40 years ago are far lower today thanks to OSHA

•Under my watch, enforcement of our labor laws will be intensified to provide an effective deterrent to employers who put their workers' lives at risk. OSHA and MSHA will be about workers — not voluntary programs and alliances. I take very seriously the report issued earlier this month by the Labor Department's Inspector General which found insufficient focus on making workplaces safer. The failings are unacceptable and will not be tolerated. Can we do better? Si se puede!

•President Obama and I believe in strong enforcement of laws that protect workers, a strong federal role in protecting workplace safety and health, as the OSHA Act originally mandated.

You additionally said, "OSHA will strengthen enforcement by hiring an additional 36 inspectors to provide guidance training and outreach to employers and workers, and launch a new effort to collect information about injuries and illnesses in the construction industry."

With all due respect Mrs. Solis, inspectors or industrial hygienist compliance officers are not qualified enough when it comes to worker safety in new technology industries; such as biotechnology and/or nanotechnology. I wish to direct you to the article, "CalOSHA: Going Down the Tubes?" that was written by the last medical doctor with Cal/OSHA, Larry Rose, MD (28 years as the senior Public Medical Officer for the statewide Cal-OSHA enforcement program (recently retired). Although Dr Rose spoke of many things in his article, the following is concerning Agraquest and my son.

Several recent dramatic examples illustrate the failure of Cal-OSHA to effectively respond to serious threats to life and health in California's workplaces:

1) "Agraquest", a biotechnology corporation, was seeking to turn a selected naturally occurring microorganism into a pesticide when an exposure to that microorganism caused a life-threatening illness in a professional employee. That illness was recognized by the employee's primary care medical practitioners as a workplace-induced illness. The Cal-OSHA investigator assigned to Agraquest totally failed to address the problem that also threatened the surrounding community, and issued only a "laboratory hood" citation. The real issue was the level of laboratory protection needed to protect the employees, and the surrounding community. Without knowing all the facts in the case, I would guess that Level 4 protection—the same required when working with any virulent

microorganism could have been considered in this workplace laboratory considering the seriousness of this employee's illness. Dealing with infectious disease hazards in the workplace requires the expertise of an independent public health physician, but CalOSHA sent an industrial hygienist compliance officer.

2) Over 80,000 new chemicals that have been released and have become the chemicals that are now in commercial circulation have not been adequately tested for general public health safety. Only 15% of these chemicals have been barely adequately tested for acute toxicity. Usually workers exposed to these untested chemicals are the equivalent of the "canary in the coal mine" who when exposed to carbon monoxide, "sway noticeably on his perch" thus warning the miners of the danger of an odorless poisonous gas.

Likewise, in the video, "Workers Comp, The Destruction of Ca-OSHA/EPA and The Case of David Bell" by the Labor Video Project, Dr. Larry Rose is very clear in his reasonings for the need of Medical Doctors within state and Federal Occupational Safety and Health Administrations. Dr. Rose additionally discussed my son, David Bell's exposure to microorganisms and the lack of OSHA compliance as well as other topics.

[Additionally interviewed in "Workers Comp, The Destruction of Ca-PSHA/EPA and The Case of David Bell" was Dan Berman; author of "Death on The Job" and Sandi Trend - **INTERVIEWER:** Steve Zeltzer ]

Steve Zeltzer: Ok we're going to talk about what happened to David Bell who was an employee at Agraequest, when he did make complaints. So, but we have an idea here of some serious problems, it seems debit problems with OSHA and with the protection of workers who complain about health and safety.

Now, Dr. Rose, you started at Cal/OSHA and you were saying there that when... how long... how many people worked there? How long did you work there? When did you get onboard at Cal/OSHA?

Dr. Larry Rose: Yes, Well when I started there were 11 million California workers and they were all covered except for Agricultural workers. That was in the Jerry Brown administration. There were six Doctors in the medical... called the Medical Unit and there were well over 2 to 3 hundred, what we call Compliance Officers - Industrial Hygienists.

Steve Zeltzer: Now why would you need a Doctor at Cal/OSHA?

Dr. Larry Rose: Well it's critical because there are a lot of areas.... the Compliance Officers, or Industrial Hygienists, and they're not trained at all in medicine. They don't know how to read a medical record, they know nothing about infectious diseases.... and we also inspect hospitals and medical facilities of all sorts and....

Steve Zeltzer: So you need a trained Physician or a trained professional, medical professional...?

Dr. Larry Rose: Absolutely, the title was Public Health Medical Officer and we were all ... had that title.

Steve Zeltzer: I see

Dr. Larry Rose: Yes

Steve Zeltzer: And there were 6 Doctors?

Dr. Larry Rose: Right, for the whole state of California.

Steve Zeltzer: For the whole state of California.

Dr. Larry Rose: Both south and north and central valley... yes. Slowly, as we had.... it was always a very political agency and as republican's came into office. First Deukmejian and then there were... Wilson. they kept, as the Doctors retired or left they would not replace them. And finally, at the last 5 to 8 years I was the only Doctor there.

Steve Zeltzer: So, for how many workers now?

Dr. Larry Rose: And now, 17 million workers.

Steve Zeltzer: So 17 million workers in California and only one Doctor?

Dr. Larry Rose:  
One Doctor for the OSHA program.

Steve Zeltzer: Of California?

Dr. Larry Rose:  
Of California and there were 2 nurses too, somewhat trained, but not with the same.... couldn't operate with the same authority that a Doctor could.

Steve Zeltzer: But there seemed to be more inspectors in people for fish and game than there is for OSHA.

Dr. Larry Rose: Well, one of the inspectors who I highly respect said, "Death by a thousand cuts". What they were doing was they were shrinking the compliance force, the compliant officers who were the industrial hygienists. They were allowing.. not hiring, doing new hires and now we're down to really, well below any standard, either the Fed OSHA standard or the adjacent state standards, like the number of inspectors per worker, say in Washington or Oregon... we're well below that now. We're just a skeletal crew

Steve Zeltzer: Well why haven't the unions in California made an issue of this? I mean, you would think that they would say, "Look, you need more Doctors, you need more inspectors"

Dr. Larry Rose: When I first came onboard.... it's almost like night and day when I first came onboard during the Jerry Brown administration we were the prime OSHA... state OSHA program. We were setting new standards. We were out there really doing excellent work. Gradually, that diminished and with political appointees from the various governors. And your question was again?

Steve Zeltzer: Well, why hasn't this been an issue in the trade union movement in California?

Dr. Larry Rose: Ah, yeah, as I started to say... so in the beginning I well remember I was working with several of the largest unions, their health and safety officers. As the union membership shrunk in relation to the.... particularly the private work force, the health and safety officers in the big unions kind of disappeared and I wasn't seeing them anymore and the activity, the awareness of the union was almost inapparent after a while. It just.... and at this point I had at the end, in the last 5 years that I was alone there, there was almost no union contact except when I joined the San Francisco Labor Council and you introduced me to various union members in the bay area.

Steve Zeltzer: But you didn't have any contact with the unions in California?

Dr. Larry Rose: No, they just broke off contact and particularly I was shocked by the lack of interest by the Labor Federation in the strength of Cal/OSHA.

Steve Zeltzer: Sure... now one of the things you were involved in is studying the history of disease, particular industries and why don't you talk about your experience with IBM because there... had some cancer outbreaks and other systemic problems in this particular industry, the electronics industry.

Dr. Larry Rose: Yeah, IBM is a good example of what I would call a failure in adequately regulating what they were doing and they put out... in the drinking water and throughout the environment of Silicon Valley, they were putting out carcinogens in the solvents they were using and the workforce was getting exposed. And so, later on there was some legal action by a public interest group down there, Santa Clara Cautions it's called and some lawyers and they were trying to find out how many of the workers got cancer so they could... you know, that would have a definite... how should I put it..... impact on the awareness of the community cuz many people were exposed outside the workplace there. So, when I was working at Cal/OSHA I tried to get those medical records, OSHA has the medical record, supposed to have access to the medical records of any big corporation like IBM and they're supposed to come forth and give them. So when I went to the administration of OSHA and I said, "I want to see those records" they said, "No we can't do that because they're under our Star Program" self regulation and they're one of the many, "and we're not going to ask for those records" and I was really shocked by that response.

Steve Zeltzer: So you, who is a Doctor for Cal/OSHA, you find this company in this important industry, very powerful industry in California and in the United States... the technology industry where there serious health and safety problems. you ask for some records...

Dr. Larry Rose: Right

Steve Zeltzer: ....of worker's who've been.....

Dr. Larry Rose: Medical records that they have...

Steve Zeltzer: Medical records that they have... they're required to have.

Dr. Larry Rose: they're required to have.

Steve Zeltzer: And they say, "We're in a volunteer compliance program with the state of California, so basically we don't have to give you the records."

Dr. Larry Rose: Well, that was what was told to me and they said also, "We're... There's litigation and we're not going to give them to you" and that actually was illegal, but I couldn't get backup from the present administration at Cal/OSHA, particularly the Chief, I won't mention his name, but I think he's.....

Steve Zeltzer: You can mention his name

Dr. Larry Rose: All right, Len Welch, and I think he's a disgrace. I'll say it out loud.

Steve Zeltzer: So, Len Welch. So there here was another issue of popcorn, why don't you talk about the popcorn.

Dr. Larry Rose: Well yeah... and then more recently... I thought I was saving the agency, this shocking event occurred which is.... it's called Diacetyl, and it's put in a lot of food, but particularly it was put in popcorn, and the popcorn workers were making this greasy stuff with the Diacetyl, it's a flavoring agent that goes on popcorn when you go to the movies for example. There's a lot of other popcorn.... consumer popcorn too... and what happened to the workers...

Dr. Larry Rose: It's a buttering agent, right.... and it's put in a lot of food... and what happened was workers who were working with this got the most incredibly, devastating lung disease that just wiped out their lungs and in order to do anything medically they actually needed lung transplants and I assumed that Cal/OSHA was going to do something about it and Len Welch said, "No, we don't have to... they have... we have an industry Doctor who will look it over" and notoriously of course industry Doctors always protect the industry.

Steve Zeltzer: So the industry Doctor will take care of it.....

Dr. Larry Rose: Right

Dr. Larry Rose: And that's what happened. And nothing.... virtually very little, if anything has happened protecting the workers and the public from Diacetyl.

Steve Zeltzer: So basically it sounds like the destruction really... of Cal/OSHA, of the health and safety problem, they've turned it over to company doctors to take care of workers.

Dr. Larry Rose: That's what he said. He said, "No, we don't have to.... we don't need Doctors anymore, we can use the industry Doctors".

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## **CONCERNING AGRAQUEST:**

Dr. Larry Rose: I'd like to inject here that the way they classify biosafety in labs is they classify it 1 through 4. Say the most hazardous, say like Anthrax would be a 4 so you have to have like space suits and total control. Now if these were pathogens he was working with [David Bell] it sounds that should rate very high in biosafety requirements.

Steve Zeltzer: But, Dr. Rose, it sounds like we've got some serious problems as far as oversight... as far as protection. I mean, and this is not the only company that's doing this kind of work... I mean .....

Dr. Larry Rose: Yea... If they're using potentially pathogenic microorganisms to spread on... you know, vast areas of the environment in relation to say, specific what they call pests the first thing you would have to determine if OSHA went in there... and what I can.... I'll get the record but from what I can tell first thing they would've had to have was either a microbiologist or a Doctor, a public health Doctor to look at how pathogenic are these organisms. Are they as bad as, say Anthrax? Could they be? And then you have to determine do they have the proper level of bio safety? And then you don't go and just look at the face velocity

of a vertical laminar flow hood... that's nonsense! What you do is then you go back and you say, "You've got the wrong level". You cite them and you require them to get the right level of bio safety and the other things... not spread the agent around in the neighborhood and that would be the approach.... and if they don't have a Doctor at Cal/OSHA to do that or.... you know.... then ... they're going in blind.

Steve Zeltzer: This whole issue of.... for example regulation of this industry, the biotech industry and genetic.... where there's genetic engineering is taking place.... I mean, is this part of the problem that this deregulatory atmosphere has created a situation where basically nobody's in charge? Is that really what's going on as far as..? It sounds like this is not an isolated incident... that products are being brought in, they're being developed genetically and in an atmosphere in which there really isn't the oversight.

Dr. Larry Rose: I also want to talk about irresponsible behavior on OSHA ... Cal/OSHA.

Dr. Larry Rose: When you're called in and a worker has possibly picked up a very serious infectious disease from the work process, you don't just go in and measure a face velocity and give a tag. You've gotta do some... you know real investigation. Go over all the medical records and you've got to get the organism and submit it to the proper lab to determine it's pathogenicity. In other words, there's a series of steps you would take because you're not only trying to protect all the workers there now and future workers, but you also have to protect the community when you're talking about an infectious disease, this is a serious public health matter. So, looking at what OSHA did and I'm just astounded that they had that kind of very weak response, inappropriate response according to the law. The law states that you have to have to go through this kind of process and you certainly can't fire a worker whose complaining. Also, OSHA should have responded within 72 hours, that's required by law in this kind of.. you know, complaint. I don't know what they were doing, but they obviously handled the thing illegally.

Mrs. Soils, I am not sure if you are aware of the corruption and illegal acts that have been and are being committed by state of California government offices and officials; with respect to not upholding the laws when it comes to fraudulent activities being committed against injured workers in this state; i.e. employers, workers' compensation insurance companies and their legal representatives and the workers' compensation system as well.

The California Department of Industrial Relations says:

*Workers' compensation is the oldest social insurance program; it was adopted in most states, including California, during the second decade of the 20th century. It is a no-fault system, meaning that injured employees need not prove the injury was someone else's fault in order to receive workers' compensation benefits for an on-the-job injury.*

*The workers' compensation system is premised on a trade-off between employees and employers -- employees are supposed to promptly receive the limited statutory workers' compensation benefits for on-the-job injuries, and in return, the limited workers' compensation benefits are the exclusive remedy for injured employees against their employer, even when the employer negligently caused the injury.*

*This no-fault structure was designed to -- and in fact did -- eliminate the then prevalent litigation over whether employers were negligent in causing workers' injuries. Litigation is now over other issues, such as whether the injury*

*was sustained on-the-job or how much in benefits an injured worker is entitled to receive.*

September 2007

What was intended to be a fair and just system for an employee, who has sustained an occupational injury or illness while in the workplace environment, has become nothing more than a sham because, although it sounds good, this is not the case.

As California is the "hub" of the biotechnology industry; I believe is the reason there has been continual concealment of human health hazards resulting from the biotechnology industry and this continues to this day within the state of California's governmental offices. *Official misconduct should not be tolerated in any circumstances and is inexcusable.*

I wish to present to you the two (2) most recent validation's of California's governmental office's willful violations of not upholding Federal and state laws; with respect to the aforementioned civil, human and judicial rights pertaining to my son [ENCLOSURES].

On June 17, 2009 and September 9, 2009 I testified before the California Department of Insurance (DOI), Workers' Compensation Fraud Commission regarding my opposition to any funding being allotted to the Sacramento and Yolo County District Attorney's; as neither District Attorney's offices had fulfilled their judicial obligations to uphold the law with regard to Federal and state of California Legal Statutes that were violated by [*not limited to*] Agraquest, Inc., the California Workers' Compensation System, Liberty Mutual Insurance Company, the law office of KATCHIS, HARRIS & YEMPUKU, the California Occupational Safety and Health Administration, the California Department of Insurance, the Sacramento County District Attorney's Office and the Yolo County District Attorney's office .

My testimony before the DOI on the dates of June 17, 2009 and September 9, 2009 were both video taped. I have transcribed these video's and I wish to present these transcriptions to you now. Documents that were additionally given to the DOI on both of these dates involves numerous pages and for the purpose of not overwhelming you with mounds of documents, I have included "screen shots" within the pages of the transcriptions. Should you wish to see the actual documents, I will be more than happy to provide them to you.

Contained within the two transcriptions you will note it was at Lt. Stroski's request [of the Yolo County District Attorney's office, Workers' Compensation Fraud Unit] that I give him an accounting of what had transpired, with reference to Agraquest's involvement in making my son sick. This was on September 11, 2007, the following day after my son's extremely unjust workers' compensation "trial". Lt. Stroski then contacted Susan Crouch of the California Department of Insurance [whom I had a meeting with]. Susan Crouch then set an appointment one (1) week later with Dale Kitching, Unit Supervisor [of the Sacramento County District Attorney's office, Workers' Compensation Fraud Unit]. Since the initial date in 2007, none of these California agencies has opened a

case against Agraquest on behalf of my son; let alone prosecute, even though I have supplied them with ample evidence to do so.

My son's medical bills, as the result of workplace exposure from working at Agraquest Inc. were in excess of \$333,000 [through the end of 2005 only] and thank God, paid for mostly by MediCare, or he wouldn't have survived. However, the American taxpayer should not have to foot the bill for an injured worker (Medicare, Social Security, MediCal) because there is continual corruption and fraudulent concealment being committed by an unsafe employer, the workers' compensation system, the workers' compensation insurance companies and their representatives; who don't want to meet their obligations of responsibility for medical care for an occupational acquired injury or illness and/or state governmental agencies.

Something is very wrong here. I urge you Mrs. Soils to see the urgency in the issues I have presented you.

Sincerely,

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Sandra (Sandi) Trend

cc: David Bell  
Steve Zeltzer

enclosures:

- 1) Sandi Trend's transcription of Testimony before the California Department of insurance dated June 17, 2009
- 2) Sandi Trend's transcription of Testimony before the California Department of insurance dated September 9, 2009