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THE SUPREME COURT OF THE UNITED STATES

TRANSCRIPT OF PROCEEDINGS

In the Matter of:

CIRACO MANEJA, ET AL

VS. NO. 357

WAIALUA AGRICULTURAL CO, LIMITED

Date: March 30, 1955

Washington, D. C.

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IN THE SUPREME COURT OF THE UNITED STATES

CIRACO MANEJA, ET AL, Petitioners,	
-vs-	No. 357
WAIALUA AGRICULTURAL COMPANY, LIMITED, Respondent.	

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ARGUMENT OF BESSIE MARGOLIN ON BEHALF OF THE SECRETARY OF LABOR AS AMICUS CURIAE

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MISS MARGOLIN: May it please the Court: In granting the writs of certiorari in this case, in these cases, the Court invited the Solicitor General to participate in oral argument on behalf of the Secretary of Labor as amicus curiae, and I am here in that capacity.

The Secretary's interest in this case derives from the fact that there are important questions of construction of the Fair Labor Standards Act involved, and these questions are not limited simply to these particular employees and this particular employer, nor are they limited to the sugar industry only. They concern many other employees and industries engaged in processing of agricultural products, such as tobacco, wheat, fruits, vegetables, and other agricultural

products.

So I would like to emphasize at the outset that any suggestion, such as the Waialua Company counsel made in their reply brief, that the interpretations here supported by the Secretary of Labor represent some newly devised interpretations contrived to defeat Waialua's position in this particular case, is an inaccurate and a wholly unwarranted charge.

I do not think that I need to say much about the ruling of the Court below with respect to coverage, that is, whether any of the employees here are engaged in the production of goods for commerce, and the holding that the production of agricultural crops could not be within the constitutional power of Congress to regulate.

There is no dispute between the parties that the Court below was plainly in error in that respect, and the Secretary of Labor agrees with the parties on the basis of this Court's repeated decisions.

The main issue in the case in which the Secretary of Labor is interested concerns the scope of the exemption for employees engaged in agriculture under Section 13(a)(6) and 3 (f) of the Act. The Court of Appeals below, reversing the trial court, ruled that all 1,144 of Waialua's employees, without exception, were excluded from both the minimum wage and the overtime provisions of the Act under the agriculture

exemption. This ruling was predicated on the broadest possible construction of the exemption. The Court of Appeals frankly proceededonthe premise that the exemption here was remedial legislation and that it should be broadly construed, an assumption which is diametrically opposed to this court's specific ruling with respect to the agriculture exemption in the Farmers Irrigation case, and contrary to the repeated rulings of this case that any exemption from this Act must be narrowly construed and limited to those who are plainly and unmistakably within the spirit as well as the terms of the exemption.

It is the position of the Secretary of Labor that while Waialua's field workers are within the scope of this exemption, the employees engaged in the separate processing plant where raw sugar is manufactured and in the separate machine shops and repair shops and in the transportation system, which covers fifty-six miles of permanent railroad line, and I think some ten locomotives and some seven hundred cane cars -- there is almost a million dollar investment in the transportation system alone -- that these employees in the transportation system and the repair shops and in the mill are typical factory and railroad and industrial workers. They are neither within the terms, the letter, nor the intent of the statutory definition of agriculture.

The type of employees involved are those that are

in the processing mill. I understand in that mill alone thereare some several hundred employees. It works on a three-shift basis, twenty-four hours a day, about nine months of the year. And while the record doesn't show precisely the number of employees in the mill, the indications are that there are several hundred of them. Perhaps counsel for the employer might supply that information.

But in this factory alone, in this processing plant alone, there are some several hundred employees. In the repair shops alone, the record shows that there are upwards of a hundred. The Court found there were upwards of a hundred employees in the repair shops, welders, machinists, electricians, ordinary industrial workers of that type, who do no farm work.

MR. JUSTICE REED: What do you mean by the separate processing plant?

MISS MARGOLIN: There is a mill here.

MR. JUSTICE REED: You are speaking of the mill where the cane sugar is first produced, where the cane is first pressed?

MISS MARGOLIN: This is where the raw sugar is produced. This is where the cane is processed into raw sugar.

MR. JUSTICE REED: And you say that is an industrial operation?

MISS MARGOLIN: It certainly is. I don't think

anyone would question the fact that it was an industrial operation.

MR. JUSTICE REED: I understood it was conceded by petitioner that those people were exempt, under a different section.

MISS MARGOLIN: Under a different section of the Act. I am talking now, and I think this is the main issue in the case, of what the agriculture exemption covers. We say they are clearly not within the agriculture exemption, and I thinkthat counsel for the employees argues that, too. They concede they are in the processing exemption, and we concede that the mill employees are in the processing exemption, which is just for overtime. And what we say is that the very fact that Congress was very specific in limiting the processing of sugar cane into raw sugar, specifically said that, limited it to the overtime exemption in Section 7 (c), is most convincing evidence that they did not intend or contemplate that it would be covered in the agriculture exemption, which gives an exemption for both minimum wages and overtime; that they were very careful to limit the exemption for processing to the overtime provisions of the Act and did not intend to exclude it completely from overtime minimum wages and child labor, for example.

As counsel pointed out, concededly, the employees working in the field are within the agriculture exemption, and

that includes the employees who load the cane on the cars and lay the portable track, and up to the time that the cane is loaded on to the cars at the main line railroad. Concededly, the field workers are within the agriculture exemption. But we think that the fallacy of the Ninth Circuit really lies in its assumption that the fact that Waialua is engaged in these operations suffices to sweep all of its thousands of employees within the exemption, including those working in separate industrial, railroad, and processing functions, the plain fact being that Waialua is not simply a farmer. On its nearly ten thousand acres of crop in Hawaii, it owns and operates, in addition to growing fields, this processing mill, at which cane is converted into raw sugar and molasses; a railroad system, which I have described as consisting of fifty-six miles of main line track, ten locomotives, and a roundhouse for servicing all this equipment, in which there is an investment of $800,000; and in addition, complete separate shops for repair of its extensive railroad and mill equipment as well as its equipment that is used in the cultivation and the field work.

This organization, thus, is plainly a hybrid organization, engaged in several different enterprises, only one of which is farming. The company no more operates its railroad, we say, or its processing mill, as a farmer, than it operates its farming as a processor or as the operator of a railroad

transportation system.

We think that the analogy to the chain store organization in its relation to the retail establishment exemption which has been before this Court is a very pertinent analogy. The Court there held that the functions of a hybrid retailer and wholesaler such as are carried on by a chain store corporation -- that their wholesale functions are outside the retail establishment exemption. And the Court specifically noted that it was a hybrid wholesaler, and even though the wholesale functions were solely for the retail stores owned by the same corporation and the services were operated for servicing its own chainstores, nevertheless its wholesale functions were held not to be within the retail establishment exemption.

We say that the same reasoning applies to a hybrid farmer-processor-railroad transportation system.

That this construction is a rational one and the one most consonant with the legislative intent, we believe is evident from the decisions of the First Circuit Court of Appeals, which had occasion to decide issues with respect to the sugar industry in virtually the identical situation involved in this case. There were three decisions handed down during the early years of the Act in the First Circuit, and those decisions are directly in conflict with the decision of the Ninth Circuit or the rulings of the Ninth Circuit in the

instant case.

The First Circuit had no difficulty at all in recognizing the separate and distinct character of the processing and the transportation system from the farming operations. They recognize that industrial operations of the proportions carried on by large corporations such as Waialua cannot be rationally regarded as mere incidents of or adjuncts or subordinate to the farming. They are just as much enterprises in their own right as the growing of the cane is.

It held that the mill employees were typical factory workers, laborers engaged in maintaining industrial facilities, and that the main line transportation employees were engaged in work separate and distinct from agriculture, which is incident to milling rather than to farming.

The court below, and the Waialua Company here, undertake to distinguish these distinctions on the ground that the employer in those cases was processing or transporting commodities produced by others rather than commodities exclusively produced by itself. But the First Circuit Court specifically declined to base its decision on this count. It pointed out that it might, if it was so disposed, have placed it on that ground in at least two of the cases, but said that, "We base our decision, however, on the broader ground that the transportation of sugar cane is incident to milling rather

than to farming and therefore is not exempt under the Act." And it went on to say: "There seems no rational basis for saying that simply because the ownership of the mills and the farms is in the same hands, that therefore those employees who are engaged in an activity which is separate and distinct from agriculture are exempt from the provisions of the Act."

Now, counsel for Waialua, in their main brief, assert that the decision of the Third Circuit supports their position rather than the Government's position. But it is hard to understand how they reach that conclusion, because the court specifically repeated that it reaffirmed its previous decisions, that the main line transportation and the mill were not incident to farming, and then went on to hold that the particular employes in that case who were loading cane in a way comparable to the loading of cane on the portable tracks here -- that those employees were within the agricultural exemption. Well, that is consistent with the Government's position that the employees in the field who are loading cane on the portable tracks are within the exemption but not those within the concentration point, where they are loaded on to the permanent main line railroad transportation system.

I might point out, largely for the benefit of Mr. Justice Frankfurter, that there were a total of five different judges participating in the First Circuit cases, and together

with the two District Judges, District Judge Metzger and District Judge Cooper of the First Circuit, seven judges have concurred in this construction, the First Circuit construction.

The Ninth Circuit broadly ruled that everything that went on on these premises, on these tenthousand acres, was really a part of the harvesting. I don't believe that even counsel for Waialua seriously is supporting that argument, although in every brief they say that they are. The whole procedure of the company up to the time this suit was filed was to separate harvesting from the main line railroad and from the mill. They have separate departments for harvesting, which takes it up through the laying of the portable track and putting the cane on cars on the portable track. And then they have a separate department. They include that in harvesting, but then they have a separate department for their transportation system.

So they, themselves, recognize that the main line transportation system was not included in harvesting. And they also, of course, have their mills separate and their repair shops separate, in separate departments, and they all have separate superintendents in charge of them.

As a matter of fact, during the off-season -- and this shows plainly that they considered some of their employees not engaged in agriculture -- during the off-season,

the three to five months, Waialua Company has been up to the time of this suit, and I assume is still, paying some of its employees overtime in the off-season. They are paying the transportation employees, the repair shop employees, and the mill employees. And their own representative testified that the reason they were paying them overtime after forty hours was because they considered that they were within the Fair Labor Standards Act and not exempt in the off-season. There is testimony by Mr. O'Donnell, their own representative, to that effect.

MR. CHIEF JUSTICE WARREN: Can you tell me where that is, Miss Margolin?

MISS MARGOLIN: I think I have it in my notes here somewhere.

MR. CHIEF JUSTICE WARREN: Don't bother, please. I will find it.

MISS MARGOLIN: I can give it to you before the end of the argument, because I do have a reference to it.

Therefore it is plain that certainly the word "harvesting" does not cover all of these employees. And, as I said, I do not believe that Waialua is seriously contending that. They necessarily must rely on the second and the broader meaning of agriculture.

Some members of the Court may recall that in the Farmers Irrigation case this Court went to great lengths to

analyze the definition ofagriculture and to point out that it has a primary as well as a secondary meaning. And in connection with the secondary meaning, which is broader than the primary meaning, and contains this "incident to and in conjunction with" phrase, and "practices on a farm or by a farmer," the Court in the Farmers Irrigation case specifically held that that part of the definition is limited, and I am quoting, "limited to practices performed by a farmer or on a farm," and in addition the practices must be performed "as an incident to or in conjunction with the employer's farming operations."

Now, we contend that none of these three conditions is met with respect to Waialua's mill, its transportation system, and its repair shop work.

First, the employees here plainly are not farmers, and they are not employed by Waialua in the capacity of farmers. They are employed by Waialua in its capacity as a processor and as an operator of the transportation system.

The First Circuit described them as typical factory workers or laborers engaged in maintaining industrial facilities. None of them works in the field except occasionally some of the men in the repair shops may go out in the field to make repairs. But most of the men in the repair shops work right in the repair shops, and their work is not limited to repairing agricultural equipment.

So far as those who testified are concerned, virtually all of them said that they worked indiscriminately on repairs for the mill and for the village and for the field work.

At anyrate, most of them worked in the shops and only occasionally worked in the field.

MR. JUSTICE DOUGLAS: What do you do about those who work in the mill village?

MISS MARGOLIN: The Secretary of Labor has taken no position on that, for this reason. We took no position under the broader language prior to 1949, the coverage language, which was the "necessary to" language. In 1949, that section was narrowed somewhat. It now reads: "closely related and directly essential" instead of just "necessary to."

The action of the employees covers the period prior to 1949, so we have taken no position as to that. Since 1949, we have recognized that Congressdid not intend to cover the repair of these village houses, largely based on some legislative history that was intended. So we have taken the position since 1949 that the maintenance of the village would not be covered.

MR. JUSTICE BLACK: You mean under the 1949 Act?

MISS MARGOLIN: Under the 1949 Act.

MR. JUSTICE FRANKFURTER: Miss Margolin, is there

anything in the Puerto Rico cases that reflects the special attention that Congress has given the Puerto Rican and Virgin Islands economy?

MISS MARGOLIN: I don't think there is anything in those decisions to indicate the First Circuit felt there was any special treatment to be given.

MR. JUSTICE FRANKFURTER: But it is fair to say. . (inaudible) . . . on the Sugar Act. As often happens, there were cross links in the two enactments, and the First Circuit found some significance in that. Did you look into that?

MISS MARGOLIN: Well, we didn't feel there was any significance in it. They are both competing in the same market. That much is clear. And they operate very, very much alike. The economic conditions may be different.

MR. JUSTICE FRANKFURTER: But it is a fact that the kind of protection that is afforded to laborers in Puerto Rico has not been afforded to laborers in Hawaii.

MISS MARGOLIN: As a matter of fact, there has been less regulation of the Puerto Ricans than there has been of Hawaiians under this Act.

MR. JUSTICE FRANKFURTER: I am not talking about this Act. I am saying: Is there any Act comparable to the Sugar Act which pertains to Puerto Rico protecting labor not covered by the Fair Labor Standards Act?

MISS MARGOLIN: Well, I am not familiar with that.

MR. CHIEF JUSTICE WARREN: Miss Margolin, I suppose the disinclination of the Secretary to take the position as to whether this little townsite and those who work here and there are included under the Act is not because there is any doubt on his part as to whether it is agriculture or not.

MISS MARGOLIN: I don't think it would be on agriculture. It would be on whether it is closely related and directly essential to production of goods for commerce under Section 3 (j), the general coverage provision.

And I might say this, that there are cases that are relied on by the employees which we think are still good law. There are the Womack and Labestrau cases. Those are cases where there was a lumber camp furnished solely for the working men. Now, the distinction here is that in this village the families lived there with him, and some people who don't work at the mill and who work elsewhere; that this is not limited simply to the workers in Waialua; that their families are there and other people are there, too, in the village. And there was some legislative history indicating that that type of repair and maintenance of a village -- some legislative history in the Conference of 1949 -- that it was intended to exclude that from coverage. And on the basis of that, we took the position. Prior to that time, we did not take a position on whether or not it was sufficient-

ly necessary to production to be within the coverage of the Act.

MR. JUSTICE REED: Miss Margolin, in the Farmers Irrigation Company case, that, of course, was a sepamte corporation.

MISS MARGOLIN: Yes, that was a separate corporation. We do not think that the decision rests on that ground.

Now, in that case you had an operation which the Court itself said was indispensable and immediately connected with agriculture. It was plainly indispensable to cultivating the soil. And the only reason that it was not called agriculture was because it was a separate corporation. That was the only reason.

But I think the reasoning in the Farmers Irrigation decision does not require that you have a separate corporation. The question is: is the function of such proportions, and so organized, as to really be a separate industrial function rather than simply an adjunct or subordinate part of farming.

MR. JUSTICE REED: It was pointed out in that case that it changes with the type of agriculture that you are dealing with. I am looking here on page 761 of that.

> "The question is whether the activity in the particular case is carried on as a part of the agricultural function or is separately organized as an independent productive activity."

MISS MARGOLIN: We think that you have a sufficient separate organization here; that the mere fact that one person owns it is not enough to hide the fact that you do have separate functions going on.

MR. JUSTICE REED: You say it is not carried on on a farm?

MISS MARGOLIN: We say it also is not carried on on a farm, for this reason. There is a separate yard and space there. There are ten thousand acres here. There are all sorts of things on these ten thousand acres. And the growing things, of course, qualify as a farm, but we don't think that you can simply take a lot of contiguous areas and put a lot of industry on it and call it a farm.

MR. JUSTICE REED: It would also be incident to the farming operation?

MISS MARGOLIN: It has to be three things. First, it has to be by a farmer. We say that Waialua is not operating these mills in its capacity as a farmer. It is not operating these repair shops as a farmer. It is operating as a processor.

MR. JUSTICE REED: This agriculture they were operating was as a farmer, was it not, when they gave exemption to the processing of the cane, as far as the over-all time was concerned?

MISS MARGOLIN: No, that had nothing to do with

whether it was a farmer. That would apply to anybody processing cane. You see, that exemption applies to anyone processing sugar cane.

MR. JUSTICE REED: You say the ten thousand acres is not a farm?

MISS MARGOLIN: We say the ten thousand acres is not a farm; that it is a whole lot of things. It has a whole transportation system on it. It has a processing mill. It has a lot of repair shops. And it certainly is not a farm in any normal sense of the term and in the sense in which we think Congress used it.

Now, there was a great deal of discussion in the legislative debates. I can't say it was entirely illuminating or conclusive. But some of the Justices here may recall that in the Congress at the time there was a great deal of discussion about this exemption. And the upshot of it was that Congress felt they had to make it clear just how far they were going to carry it into processing. But it is hard to pick out any particular excerpts from that legislative history to prove anything.

I think, though, that if the Court wouldread it in its context, it was plain that they did not intend this agricultural exemption to get into processing which changed the complete form of the article in its raw and natural state.

Now, there are special exemptions. There is a

special exemption in Section 13 (a) (10) for processing within limits, within the area of production. And it named specifically the kinds of processing that would be exempt. Section 7 (c) is very specific on the kinds of processing that would be exempt. And the attempts to get that into the agriculture exemption were all rejected. And all the discussions indicate that they were not intending to go as far as processing an agriculture commodity into a different product.

MR. JUSTICE REED: Would you not say the purpose was to exempt all the activities of agriculture? The purpose of Congress?

MISS MARGOLIN: Not a complete exemption. I think they wanted to limit the complete exemption, minimum wage and overtime, to those things that were performed ordinarily as farming. And I think counsel today brought out something which is rather disturbing, if it is considered that everything here would be held agriculture, and which does not appear in our brief. We overlooked the point, too, as counsel says he did. And if all this is agriculture, then the child labor provisions do not apply to it, either. And it is perfectly plain, I think, that Congress did not intend that child labor should be allowed in these repair shops and on this transportation system and in this processing mill. And yet, if Waialua's position is correct here and the court below

is correct, and all this is agriculture, within Section 3 (f), then the child labor provisions do not apply either.

MR. JUSTICE FRANKFURTER: Miss Margolin, you indicated that the interest of the Secretary of Labor is not the specific case but the general reach of what is involved here, rather than the two hundred thirty-odd.

Have you any statement as to the extent to which this case will rule?

What numbers of employees have been in the past?

MISS MARGOLIN: We have no precise figures on that.

MR. JUSTICE FRANKFURTER: What is the scale? What is the order of magnitude that is involved?

MISS MARGOLIN: Well, I will say this, that we have cases pending in the tobacco industry right now. There are a couple in the Fifth Circuit, which involve a similar problem. As to where you are going to draw a distinction between a tobacco grower who processes his own tobacco and the smaller farmers -- because thatis what this means. If this is agriculture simply because the man is processing, the employer is processing, only his home grown crops, if that is the only reason that is agriculture, what it means is that your bigcorporation, your big growers, have a complete exemption in their processing plants, whereas your independent processing plants, which process the small farmer's commodities, have only an overtime bearing.

MR. JUSTICE FRANKFURTER: I did not mean to raise any argument by the question.

MISS MARGOLIN: It is pretty extensive, because we have it in canning of fruits and vegetables.

MR. JUSTICE FRANKFURTER: I was going to ask how extensive this type of situation is in the fruit industry? Is it duplicated in the fruit industry?

MISS MARGOLIN: It is quite extensive. And it is becoming quite extensive in the tobacco industry. There is also processing in wheat.

MR. JUSTICE FRANKFURTER: It will run into the thousands, more than a thousand?

MISS MARGOLIN: I think it would run well up into the hundreds of thousands.

MR. JUSTICE FRANKFURTER: Hundreds of thousands?

MISS MARGOLIN: That, of course, is a pure guess. I tried to get specific figures, and we were not able to get them.

MR. JUSTICE FRANKFURTER: You do not think that you will take us up the hill and then have to take us down?

MISS MARGOLIN: I think not, because I think this Administration feels that these exemptions are already too broad in scope and the tendency should be to narrow them rather than to broaden them.

MR. JUSTICE FRANKFURTER: I notice you say "should

be."

MISS MARGOLIN: The proposals that have been made so far tend in that direction.

MR. JUSTICE REED: There was no indication that you found, I take it, in the congressional history, that they were making any distinction between the large mechanized farmer and the smaller ones?

MISS MARGOLIN: Not so far as farming is concerned. That is true. Just because it is a large farm, we do not say for that reason, or because it is a mechanized farm, it is not entitled to the agriculture exemption. But we do say that when they get into an industrial enterprise of the proportions that this company is engaged in,a whole factory and a whole separate railroad transportation system, that is not farming.

MR. JUSTICE REED: The Act carefully distinguishes that, because it says, "on a farm as an incident to or in conjunction with."

Now, when you take the mechanized farm, you necessarily have a machine shop, even if it is a small mechanized farm.

MISS MARGOLIN: Well, if it were a small mechanized farm, and the machine shop was the sort of thing that was usually on a farm. And we think it is very important as to the proportions which these enterprises assume. I think

the size of them is important; the extent to which they are limited solely to the farmer; the extent to which employees are interchanged. And we have said it depends upon those facts. We havesaid that in our interpretations.

Here you do not have any interchange of employees. You take your small mechanized farm with your repair shop. Your farmhands would be doing the repairs in that repair shop, in all likelihood.

MR. JUSTICE REED: It depends altogether on the size. Take the size of a thousand acres. You would have one man who did the repairs.

MISS MARGOLIN: We say when you get to the size, when you get to such proportions, you really have a factory and you really have a big repair shop. Then that is something that is not a mere incident or subordinate part of farming. That is another kind of a business he is in. And he is not simply a farmer when he is doing factory work and repair work and transportation work of those proportions. He is something more than a farmer.

MR. JUSTICE REED: Only for himself.

MISS MARGOLIN: Only for himself, too. But he is something more than a farmer. He is not simply a farmer when he is doing all that. He is just as much a processor and just as much a railroad man as he is a farmer.

MR. JUSTICE FRANKFURTER: You are saying that size

changes function.

MISS MARGOLIN: I think size may very well change function. I think, in fact, of course it has. We certainly do not find the farm in the ordinary sense of the term operating a railroad system fifty-six miles long. You don't find them operating ten or twelve repair shops or a big sugar processing plant, which, in itself, runs on a three-shift basis and itself employs several hundred ordinary factory workers.

MR. JUSTICE REED: There is only one king ranch.

MR. JUSTICE FRANKFURTER: I do not know about that, Miss Margolin. An internal railroad may be an internal part and not a railroad. I am just suggesting difficulties.

MISS MARGOLIN: We don't suggest that these cases are wholly without difficulty, or we wouldn't be before the Court today. Of course, they are not without difficulty, and we realize that from our own difficulties in the early days of interpreting this exemption.

And in that connection, I don't believe we have furnished the Court with the bulletin we had on the agricultural exemption. I think if the Court sees that in its context, taking up the various exemptions that relate to agriculture and processing of agricultural products, you will see the import of the First Circuit's reasoning that these exemptions have to be taken in pari materia and that the exemption has to be taken with the lesser exemptions where

Congress was very careful to limit the scope of exemptions to certain things and it did so because it did not intend to give the broad exemption that is in the agriculture provision.

MR. CHIEF JUSTICE WARREN: Willyou furnish us with copies of that bulletin?

MISS MARGOLIN: I have copies with me, and I will leave themwith the clerk.

I want to say, about that bulletin, because it does have -- and this may go to the difficulties of interpretation here that you referred to, Mr. Justice Frankfurter. Because at that time, and prior to the First Circuit's decisions, we ourselves thought and said that if a farmer, a cane grower, processed only his own cane, that would be considered within the exemption. Well, the First Circuit very quickly disabused us on that, and we concluded that the First Circuit was correct, when we had more experience and saw how these things operate. And counsel for Waialua relies very heavily on that early statement in the 1949 bulletin.

Other material in that bulletin, I think, supports the reasoning of the First Circuit, that when you have industrial activities of the proportions as carried on by the sugar operators in Puerto Rico or Hawaii, they are not simply farmers. They are just as much processorsas they are farmers. And it is not an incident to and in conjunction with

farming, but it is in conjunction with and incident to the milling. And the milling is something separate and apart from the growing of the cane.

I might say that six years prior to the institution of this suit, that position was stated publicly by the Administrator, which further goes to confirm the fact that these are not new positions taken for purposes of this case. I do not believe I need to say much about that, because I do not believe counsel for Waialua really sincerely believes that they were taken particularly for purposes of this case.

MR. JUSTICE REED: Does your brief cover the present tendencies towards larger farms and specialization on the farm? Does it go into off-the-farm operations for such things as sugar and butter-making?

MISS MARGOLIN: I think the brief covers some of those things.

MR. CHIEF JUSTICE WARREN: Very well.

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